BULLETIN OF HUMAN RIGHTS

89/1

Implementation of International Human Rights Instruments

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Introduction

Jan Martenson
Under-Secretary-General for Human Rights

Human rights issues are at the heart of the entire United Nations system. Every United Nations body, regardless of its specific assignment, functions with the ultimate goals of the Organization in mind: the protection and promotion of world peace and of human rights.

This general commitment is anchored in the United Nations Charter and in countless resolutions of the General Assembly and of the Economic and Social Council. But it does not suffice to reiterate that human rights are a raison d'être of the Organization. What is crucial is that the Organization has engaged in broad and comprehensive standard-setting, creating a large number of human rights instruments and establishing an international machinery to monitor implementation and observance of these instruments.

Of course, before any instruments could be drafted and adopted, it was necessary to set up a law-giving body: the Commission on Human Rights, which was established in 1946 pursuant to Article 68 of the Charter, which provides that the Economic and Social Council shall set up commissions "for the promotion of human rights". The first task, then, of the Commission was to define in a more or less precise way the scope and content of "human rights". Thus, the Commission drafted a Universal Declaration of Human Rights, which was proclaimed by the General Assembly on 10 December 1948, a *de facto* code of human rights, even if it was only called a "declaration". What followed was a productive period of further codification in the form of internationally binding treaties, notably the International Covenant on Economic, Social and Cultural Rights (adopted by the General Assembly on 16 December 1966, in force since 3 January 1976), the International Covenant on Civil and Political Rights and the Optional Protocol thereto (adopted on 16 December 1966, in force since 23 March 1976), the International Convention on the Elimination of All Forms of Racial Discrimination (in force since 4 January 1969), the Convention on the Elimination of All Forms of Discrimination against Women (in force since 3 September 1981), the Convention against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment (in force since 26 June 1987), the Convention on the Rights of the Child (adopted by the

General Assembly on 20 November 1989), the Convention on the Suppression and Punishment of the Crime of *Apartheid* (in force since 18 July 1976) and some fifty other international conventions and declarations.

Standard-setting alone, however, does not guarantee the enjoyment of human rights. The same international machinery that created the international instruments also assumed monitoring responsibilities, and other special monitoring bodies were also created.

Besides the Commission on Human Rights, a Sub-Commission on Prevention of Discrimination and Protection of Minotiries came into being in 1947 and it has grown into a key body, composed of 26 experts acting in their personal capacities. The Sub-Commission has established three working groups to assist it with certain tasks: the Working Group on Communications; the Working Group on Slavery; and the Working Group on Indigenous Populations. The Sub-Commission has also established sessional working groups, notably on the Encouragement of Universal Acceptance of Human Rights Instruments, on the Rights of Persons Detained or Imprisoned, and on Detention on the Ground of Mental Ill-health.

A most important treaty-body established to monitor compliance with specific treaties is the Human Rights Committee, set up in 1976 in accordance with article 28 of the International Covenant on Civil and Political Rights. It is composed of 18 independent experts, mostly judges or professors of international law. Its principal tasks are to examine States' periodic reports, and to issue its "views" (final decisions on the merits) after consideration of individual communications submitted under the Optional Protocol. Although not established as an international court of human rights with competence to hand down binding judgements, the Committee operates in a quasi-judicial fashion and its decisions under the Optional Protocol have been honoured by States parties, *inter alia*, through changes in legislation, release of prisoners and payment of compensation to victims of human rights violations.

The Committee on Economic, Social and Cultural Rights was established in 1985, and is similarly composed of 18 experts. It examines reports submitted to it by States parties on the measures which they have adopted and the progress made in achieving the observance of economic, social and cultural rights. It does not have a communications procedure.

The Committee on the Elimination of Racial Discrimination, established in 1970, consists of 18 experts whose task is to consider reports on the legislative, judicial, administrative or other measures States parties have adopted to give effect to the provisions of the Convention. In accordance with article 15 of the Convention, the Committee also considers copies of petitions, reports and other information on racial discrimination relating to Trust and Non-Self Governing Territories. Pursuant to article 14 of the Convention, it examines individual communications.

The Committee against Torture, established in 1987, consists of 10 experts whose tasks are to examine States' reports and individual communications.

The Group of Three, established under the International Convention on the Suppression and Punishment of the Crime of *Apartheid* is appointed annually by the Chairman of the Commission on Human Rights and consists of three members of the Commission who are also representatives of States parties to the International Convention on the Suppression and Punishment of the Crime of *Apartheid*.

Apart from these treaty-bodies and functional commissions, the United Nations human rights machinery relies on the assistance of many working groups, *inter alia*, the Working Group on Enforced or Involuntary Disappearances, the *ad hoc* Working Group of Experts on Southern Africa, the Working Group on the Rights of Minorities, and on a large number of special rapporteurs on the human rights situations in certain countries, including Afghanistan, Chile, El Salvador, Iran, and Romania, and thematic rapporteurs on summary and arbitrary executions, on torture, on discrimination based on religion, and on the question of mercenaries.

All of these bodies and special rapporteurs are serviced by the staff of the United Nations Centre for Human Rights, with headquarters in Geneva and an office in New York. The Centre is made up of the Office of the Under-Secretary-General for Human Rights and six main sections (Advisory Services and Technical Assistance; Communications; External Relations; International Instruments; Research and Studies; and Special Procedures).

Thus, the action of the United Nations in the field of human rights is based on the triangular relationship existing between the requirements of legislation, implementation and information/education. The Centre for Human Rights is pursuing these three areas concurrently and in parallel, in increasingly close co-operation with the wider human rights community, made up of regional and national institutions, academic and research communities, media and non-governmental organizations. For while most of the legislative process is today basically behind us, the priority now is clearly the universal implementation of international human rights norms and standards, not least through the use of a complex machinery built up by the United Nations over the past twenty years.

Yet the effectiveness of this international system of protection of human rights can be greatly enhanced by awareness and knowledge by everyone of universally accepted norms of human rights and the means available, even to individuals, for their promotion and protection.

It is my hope that the contributions made by leading government officials as well as renowned experts in the field of human rights to this issue

of the *Bulletin on Human Rights*, devoted to the implementation of international human rights instruments, will lead to a better understanding of some of the means developed by the international community for the promotion and protection of human rights, and be an effective tool of information within the framework of our World Campaign for Human Rights, whose main objective is to help create a universal culture of human rights.

Implementing economic, social and cultural rights: the functions of reporting obligations

*Philip Alston**

In 1987, the Committee on Economic, Social and Cultural Rights was informed by one State party to the Covenant on Economic, Social and Cultural Rights that the State had succeeded in achieving the status of a paradise on earth, at least as far as the enjoyment of the human rights in question was concerned. Although this assessment was greeted with considerable scepticism on the part of some members of the Committee, it was in some respects not dramatically more optimistic than the picture painted in their reports to the Committee by a number of other States parties to the Covenant. Indeed such "rosy" pictures continue to emerge from the reports of some States despite estimates by the World Bank, UNICEF and others that many hundreds of millions of people continue to live in absolute poverty around the world, that perhaps more than a billion are without adequate shelter, that millions of children die every year from readily preventable diseases and that discrimination on the grounds of sex, race, religion and other factors are commonplace almost everywhere. Moreover, it is clear that problems of hunger, homelessness, inadequate access to health care and unacceptably limited educational opportunities are by no means the exclusive preserves of the least developed countries; rather, they concern all States.

The paradox is readily apparent. The dilemma posed, in terms of effective implementation of the Covenant, is also straightforward. Simply put, it is: how can the Committee persuade States parties to the Covenant to be more forthcoming in acknowledging the nature and extent of the problems which they confront in seeking to realize, for all their citizens, the relevant economic, social and cultural rights?

This in turn raises an issue of even broader significance in the present context: how to improve the effectiveness of reporting procedures as a whole, given that they are the dominant means by which the international community seeks to promote implementation of States' human rights treaty

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obligations. As new sets of reporting obligations deriving from new conventions enter into force for States, and as others undertake (through ratification or accession) the obligations provided for in the principal existing treaties, the pressure to reduce the burden which reporting procedures impose on States and to co-ordinate the different procedures more effectively will serve to underline the need for a fresh look at the basic objectives sought to be achieved by reporting. But before turning to those issues, it is appropriate to outline the background against which the Committee on Economic, Social and Cultural Rights has begun to grapple with them.

Differences between the two sets of rights

It is sometimes assumed, on the basis that the two sets of rights (civil and political on the one hand and economic, social and cultural on the other) are "interdependent and indivisible" (General Assembly resolution 32/130), that it follows that the various rights are identical in nature and that therefore precisely the same approach to implementation can be followed. But neither of these assumptions is entirely correct. In the first place, there are significant differences in terms of the type of responses called for in pursuing efforts to ensure, for example, the right to food as opposed to the right to be free from torture. Those differences manifest themselves in matters such as: the systematic implications of the problems and their root causes; the extent of the resources which might be needed in order to end violations definitively; the impact of the international economic climate; the appropriateness, or effectiveness, of the more traditional, individualized legal recourse procedures and so on. None of these differences implies that either right is in any way less fundamental or less compelling than the other. Such is clearly not the case.

In the second place, the implementation mechanisms which have been devised with respect to civil and political rights are not necessarily those which are going to be most effective, or workable, with respect to some economic, social and cultural rights. At least at the present time, constitutional and other formal legal guarantees are often less effective in the latter case, the role of lawyers and traditional legal techiques is less important, the range of policies and practices which is implicated may be greater, the process of determining whether or not a State is in compliance with the relevant obligations is sometimes considerably more complex and the conclusions to be drawn from that process will often need to be much more nuanced and carefully formulated.

There are, therefore, two reasons for seeking to devise new and more carefully tailored approaches to the fulfilment by States parties of their reporting obligations under the Covenant on Economic, Social and Cultural

Rights. The first is the need to take account of general trends and pressures with respect to human rights treaty-based reporting procedures. The second is the need to reflect more accurately the precise nature of the rights in question and the principal difficulties which have arisen in efforts to ensure their respect and fulfilment. It bears repeating, however, that the need for differing and more innovative approaches should not be interpreted in any way as lending support to arguments (which are, or should now be, largely discredited) to the effect that economic, social and cultural rights are therefore not human *rights* at all.

The role of the Committee

Since 1987, the task of devising effective and acceptable implementation procedures has fallen to the Committee on Economic, Social and Cultural Rights. Unlike its counterpart, the Human Rights Committee, which monitors the Covenant on Civil and Political Rights, establishment of the "new" Committee was not mandated by the Covenant but was based on a 1985 resolution of the Economic and Social Council (1985/17). The Committee was brought into being only after various other mechanisms linked directly to the Council had been tried with little, if any, success. The conclusion implicitly drawn by the Council was that a Committee of independent experts, operating more or less along the lines of the other principal (treaty-based) committees, seemed to offer the best chance that the implementation of economic, social and cultural rights would become a serious and sustained endeavour. Between 1979 and 1986, when various types of Working Groups had been entrusted with the responsibility, efforts had been sporadic and largely undermined by various political factors which were permitted to intrude. By contrast, the circumstances in recent years have been far more propitious, due in part to the changing political climate in Eastern Europe, the deepening awareness of the importance of economic, social and cultural rights in other parts of the world and a growing convergence in the kinds of problems faced by countries with different political, economic and ideological structures.

Approaches to supervision

In essence, the international community has accepted four different means by which to encourage Governments to promote and protect human rights. They include procedures based on inter-State complaints which have been very rarely used except perhaps in the context of the Council of Europe, and procedures providing for complaints (or "petitions" or "communications" as they are euphemistically called) by individuals or groups whose rights are alleged to have been violated. Neither of these two

mechanisms is provided for in the Covenant on Economic, Social and Cultural Rights although it is by no means inconceivable that an effective complaints procedure governing these rights could be designed and implemented, provided the necessary innovations could be incorporated.

The third "supervisory" mechanism is of a more adversarial nature and consists of fact-finding and reporting by rapporteurs or other experts in response to alleged violations. While such reporting has sometimes neglected economic, social and cultural rights, those rights should always, in principle, be covered.

The fourth approach to international supervision is that which is based on reporting. This is the only mechanism which is specifically provided for in the Covenant on Economic, Social and Cultural Rights and it is clearly the key to the success or failure of the Committee's efforts to promote effective implementation by the 92 States parties which, as of February 1989, have ratified or acceded to the Covenant.

The reporting obligation under the Covenant

Under article 16 of the Covenant, States parties undertake to submit reports on the "measures which they have adopted and the progress made in achieving the observance of the rights" recognized in the Covenant. It is also foreseen under article 17(1) that the reports will be furnished "in stages, in accordance with a programme to be established by the Economic and Social Council". The nature of the "stages" envisaged was not spelled out and the term can be read as referring either to a distinction between initial and subsequent (or what are called "periodic") reports or to a three-phase programme according to which each report dealt with only three of the articles contained in Part III of the Covenant (i.e. articles 6-9, 10-12 or 13-15).

For the first decade (i.e. from 1979 to 1988) both types of stages were reflected in the relevant procedures. However, while the difference between an initial report, which should clearly be particularly thorough and comprehensive, and a periodic report, which was designed more to focus on changes during the intervening period, is of continuing validity, the compartmentalization of the various rights now appears somewhat clumsy and inappropriate. It was originally justified on the basis that it grouped together the rights which were of interest to each of the major specialized agencies (arts. 6-9 for ILO, arts. 10-12 for WHO and FAO, and arts. 13-15 for UNESCO). However, since the agencies were never able to perform the role which was initially envisaged for them, this division of labour lost its rationale. Moreover, it became very clear to the Committee that it made little sense to be considering the situation in a State with respect for example to an adequate standard of living (art. 11) without reference to the right to

work (art. 6), the right to social security (art. 9) and perhaps also the right to education (arts. 13-14).

Thus, in 1988 the Committee decided to abandon the system of phased reporting which took up to nine years for one entire cycle to be completed and to replace it with a global report which would deal with all of the rights in a single report. The new system, which will be introduced over a transitional period from 1989 onwards, will require initial reports to be submitted within two years of the Covenant's entry into force for the State concerned, and periodic reports every five years thereafter. It is hoped that this system will also reduce the overall burden imposed on reporting States as well as making the system more comprehensible to all concerned.

The diverse functions of reporting

Despite the central importance of the process of reporting in the context of the work of the various human rights supervisory bodies which function within the United Nations framework, relatively few attempts have been made to set out clearly the different types of goals which the reporting process is designed to achieve. Yet in the absence of a sophisticated understanding of the purposes and usefulness of that process, it is not surprising that some States seem to treat their reporting obligations almost as an unpleasant ritual which must be undergone in order to keep the relevant Committee happy and to provide an appearance of formal accountability.

In this context it is highly significant that the first General Comment adopted by the Committee on Economic, Social and Cultural Rights, at its third session, in 1989, dealt specifically with the issue of reporting by States parties. The General Comment is premised on the assumption that the process is designed to achieve a wide variety of objectives and that the actual presentation of the report before the Committee is only one part of an exercise which should have considerably broader ramifications. It deals with the various objectives of the reporting process in what might be considered to be chronological order, starting with the comprehensive review which a State should undertake in preparation for its initial report. That review should cover "national legislation, administrative rules and procedures, and practices" and, according to the Comment, might

> be undertaken in conjunction with each of the relevant national ministries or other authorities responsible for policy-making and implementation in the different fields covered by the Covenant.

In other words, the initial report should not simply be something pulled together in a formalistic manner by officials in the Foreign Ministry who might have only a limited grasp of the details of the actual situation.

The second objective specified in the General Comment is intended to emphasize that domestic monitoring should be a continuing process rather

than a one-shot performance. Thus its suggests that the State should monitor

> the actual situation with respect to each of the rights on a regular basis and . . . thus [be] aware of the extent to which the various rights are, or are not, being enjoyed by all individuals within its territory or under its jurisdiction.

In this context the Committee also indicated that

> special attention [should] be given to any worse-off regions or areas and to any specific groups or subgroups which appear to be particularly vulnerable or disadvantaged.

The reason for which such careful monitoring needs to be undertaken is suggested in the third objective which is said to be

> the elaboration of clearly stated and carefully targeted policies, including the establishment of priorities which reflect the provisions of the Covenant

in order to demonstrate that the sort of "principled policy-making" required by the Covenant has been undertaken.

The fourth objective specified in the General Comment is

> to facilitate public scrutiny of government policies with respect to economic, social and cultural rights and to encourage the involvement of the various economic, social and cultural sectors of society in the formulation, implementation and review of the relevant policies.

Members of the Committee have often asked the representatives of States whether such involvement has occurred and, in a number of cases, an affirmative response has been received. In fact, the desirability of such an approach has long been recognized, as is illustrated by the fact that in 1956 the Commission on Human Rights (resolution I, para. 3) requested "the Economic and Social Council to call the attention of each Member State to the advisability of setting up an advisory body, composed of experienced and competent persons, to assist their Government in the preparation" of the periodic report on human rights which all Governments had been asked to submit to the Commission on a regular basis. The assumption is that a national policy dialogue should precede or complement the international dialogue which the State undertakes with the Committee. If undertaken in a serious manner, the former could prove to be of considerably more value than the latter.

The fifth objective of the reporting process is "to provide a basis on which the State party itself, as well as the Committee, can effectively evaluate the extent to which progress has been made" over time. This is particularly important given the concept of "progressive realization" embodied in the Covenant. The sixth objective is in some respects the most straight-forward but at the same time, perhaps the most problematic from the viewpoint of Governments. It is, in the words of the General Comment

> to enable the State party itself to develop a better understanding of the problems and shortcomings encountered in efforts to realize progressively the full range of economic, social and cultural rights. For this reason, it is essential that States parties report in detail on the "factors and difficulties" inhibiting such realization. This process of identification and recognition of the relevant difficulties then provides the framework within which more appropriate policies can be devised.

To date, Governments of almost all varieties have been extremely reluctant to report to the Committee about such "bad news". Yet, in the longer term, it would seem indispensable to encourage them to do so since they are, and will remain, the single best informed source on such matters and since recognition of the existence of a problem is usually a prerequisite to its solution.

The final objective noted by the Committee is to enable it,

> and the States parties as a whole, to facilitate the exchange of information among States and to develop a better understanding of the common problems faced by States and a fuller appreciation of the type of measures which might be taken to promote effective realization of each of the rights contained in the Covenant.

This objective can then give rise to the adoption of General Comments dealing with specific aspects of the Covenant and also lends itself to identifying areas in which advisory services might appropriately be made available by the United Nations.

Conclusion

The Committee's General Comment No. 1 (1989) on "Reporting by States parties" thus contains a number of very important policy implications. It is premised on a realistic understanding of the limitations of the role which can and should be played by such a monitoring body, at least at the present stage of the evolution of this type of international procedure. The emphasis is on the Committee's role as a catalyst to meaningful domestic action which is designed to promote realization of the rights recognized in the Covenant. In the final analysis, if the reporting process succeeds in stimulating a genuine national dialogue about those rights, it will have achieved an enormous amount.

The role and machinery of the United Nations in the field of human rights*

(The implementation function)

*M. C. Bhandare***

The administration of justice is an important aspect of the promotion and protection of human rights and fundamental freedoms. The human rights and fundamental freedoms are meaningless unless they are enforceable. The enforcement depends upon effective administration of justice.

It was forty years ago, on 10 December 1948, that the Universal Declaration of Human Rights was adopted at the General Assembly of the United Nations. Besides the Charter provisions that have a bearing on human rights, it is this Declaration which has guided much of the multilateral work on the different human rights for what has been carried on in the past four decades. The coming commemorative event of celebrating the fortieth anniversary of the Universal Declaration is a good opportunity to take stock of human rights programmes of the United Nations and consider the coming challenges of the future.

The urge for the protection of human rights emanated from the gross violations preceding and during the two World Wars of the century. The protection of human rights, one of the war aims of the Allies in the Second World War was translated into reality with the formation of the United Nations. It was realized that only international protection and promotion of human rights can achieve international peace and progress. Thus, in the Atlantic Charter of 14 August 1941, subscribed to and endorsed by 47 nations, the President of the United States and the Prime Minister of the United Kingdom expressed the hope

> to see established a peace which will afford to all nations, the means of dwelling in safety within their own boundaries and which will afford assurance that all the men in all the lands may live out their lives in freedom from fear and want.

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* This article is based on a keynote address delivered by M. C. Bhandare at the opening session of the training course organized by the United Nations Centre for Human Rights in co-operation with the United Nations Association of the USSR in Moscow on 21 November 1988.

** M.P.; Chairman, United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities.

In the declaration by the United Nations signed on 1 January 1942 by 26 nations then at war and subsequently subscribed to by 21 other nations, the signatory Governments expressed their conviction

that complete victory over the enemies is essential to defend life, liberty, independence and religious freedom, and to preserve human rights and justice in their own lands as well as in other lands.

The Dumbarton Oaks proposals, drawn up in 1944, contemplated the establishment of a general international organization under the title, "The United Nations", which would among other things, "facilitate solutions of international economic, social and other humanitarian problems".

The Dumbarton Oaks proposals were the basis of the work of the United Nations Conference on International Organization, which met in San Francisco in 1945 and completed the Charter of the United Nations.

The very Preamble of the United Nations Charter stated the determination of the peoples of the United Nations

to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small.

Article 1, paragraph 3 includes among the purposes of the United Nations the achievement of international co-operation

in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion.

Articles 55 and 56 of the United Nations Charter have a direct bearing on United Nations action in the field of human rights. Their text is as follows:

Article 55

With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:

(*a*) Higher standards of living, full employment and conditions of economic and social progress and development;

(*b*) Solutions of international economic, social, health, and related problems; and international cultural and educational co-operation; and

(*c*) Universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

Article 56

All members pledge themselves to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55.

On 10 December 1948, which is observed annually as Human Rights Day, the General Assembly adopted the Universal Declaration of Human Rights drafted by the Commission on Human Rights under the Chairmanship of Mrs. Eleanor Roosevelt, widow of the late illustrious President of

the United States. The Declaration consists of 30 articles providing the following basic rights and fundamental freedoms to which all men and women are entitled without any discrimination:

The right to life, liberty and security of person;

Freedom from slavery and servitude;

Freedom from torture or cruel, inhuman or degrading treatment or punishment;

Equality before the law and the entitlement to equal protection under it;

Freedom from arbitrary arrest and detention;

The right to a fair trial by an independent and impartial tribunal;

The right to be presumed innocent until proved guilty;

Inviolability of the home and secrecy of correspondence;

Freedom of movement and residence;

The right to seek in other countries asylum from persecution;

The right to a nationality;

The right to marry and to found a family;

The right to own property;

Freedom of thought, conscience, and religion;

Freedom of opinion and expression;

Freedom of peaceful assembly and association;

The right to vote and to participate in government;

The right to social security;

The right to work and to form and join trade unions;

The right to an adequate standard of living;

The right to education;

The right to participate in the cultural life of the community.

The Universal Declaration of Human Rights according to the General Assembly provides, "a common standard of achievement for all peoples and all nations" in the field of human rights. The rights contained in the Universal Declaration are inalienable and inviolable. This Declaration has inspired the constitutions of over 43 countries.

To give binding legal effect to the Universal Declaration of Human Rights, in 1966 the United Nations General Assembly adopted three other covenants and legal instruments which defend and guarantee the protection of human rights. They are the International Covenant on Economic, Social and Cultural Rights 1966, the International Covenant on Civil and Political Rights 1966 and the Optional Protocol to the latter Covenant. The Covenants are treaties binding on the States which ratify them. Together they constitute the four corners of the mighty edifice of international human rights and are, therefore, called the International Bill of Human Rights. Ac-

cording to U Thant, they are a "Magna Charta" for mankind. The two Covenants relating to human rights provide the internal protection for specified rights and freedoms. Both Covenants recognize the right of the peoples to self-determination. Both have provisions barring all forms of discrimination in the exercise of human rights. Both have the force of law for the countries which ratify them.

The first treaty, the Covenant on Economic, Social and Cultural Rights, recognizes the right to work and to free choice of employment; to fair wages; to form and join unions; to social security; to adequate standards of living; to freedom from hunger; to health and education. States which ratify the Covenant acknowledge their responsibility to promote better living conditions for their peoples. States' reports on their progress in promotion of these rights are reviewed by a committee of experts appointed by the Economic and Social Council.

The Covenant on Civil and Political Rights recognizes the right of every human person to life, liberty and security of person; to privacy; to freedom from cruel, inhuman or degrading treatment and from torture; to freedom from slavery; to immunity from arbitrary arrest; to a fair trial; to recognition as a person before the law; to immunity from retroactive sentences; to freedom of thought, conscience and religion; to freedom of opinion and expression; to liberty of movement including the right to emigrate; to peaceful assembly and to freedom of association.

Human rights-related activities within the United Nations system are carried out through both the General Assembly and the Economic and Social Council (ECOSOC).

The General Assembly is vested by the Charter with the responsibility of initiating studies and making recommendations to assist in the realization of human rights and fundamental freedoms for all. Since the adoption of the Universal Declaration of Human Rights in 1948, the Assembly has adopted over 60 declarations or conventions dealing with human rights. They deal with genocide, racial discrimination, *apartheid*, refugees, stateless persons, the rights of women, slavery, marriage, children, youth, aliens, asylum, disabled and mentally retarded persons, torture, development and social progress. The conventions have the force of international law for the States which have become parties to them.

Most items relating to human rights are referred by the General Assembly to its Third Committee, which deals with social, humanitarian and cultural matters. Some are also considered by the Assembly. Items of an essentially political character are normally referred to the First Committee or to the Special Committee. Those of an essentially economic character are referred to the Second Committee, those relating to decolonization to the Fourth Committee, and those of a legal nature to the Sixth Committee.

The Fifth Committee deals with administrative and budgetary questions, including those arising from the consideration of human rights items.

Subsidiary bodies of the General Assembly concerned with human rights and fundamental freedoms include: the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, known as the Special Committee on Decolonization; the United Nations Council for Namibia; the Special Committee against *Apartheid*; the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Population of the Occupied Territories; and the Committee on the Exercise of the Inalienable Rights of the Palestinian People.

A number of United Nations bodies are concerned with human rights from time to time and in varying degrees. These include the Security Council, the Trusteeship Council, the International Law Commission, the United Nations Secretariat, the Office of the United Nations High Commissioner for Refugees and the International Court of Justice.

Four specialized agencies of the United Nations system of organizations—the International Labour Organisation, the United Nations Educational, Scientific and Cultural Organization, the World Health Organization and the Food and Agriculture Organization of the United Nations—have a special interest in human rights matters.

A number of international conferences have also been convened under United Nations auspices to deal with various aspects of human rights.

Under Article 62 of the United Nations Charter, the Economic and Social Council may "make recommendations for the purpose of promoting respect for, and observance of, human rights and fundamental freedoms for all". It may also prepare draft conventions for submission to the General Assembly, and call international conferences on human rights matters. Under Article 68, the Council "shall set up commissions in economic and social fields and for the promotion of human rights".

Article 64 empowers the Council to

> make arrangements with the Members of the United Nations and with the specialized agencies to obtain reports on the steps taken to give effect to its own recommendations and to recommendations on matters falling within its competence made by the General Assembly,

and to communicate its observations on these reports to the Assembly.

The Council, which is composed of 54 members, normally holds an organizational session and two regular sessions each year. In addition, it occasionally holds special sessions. Human rights items are usually referred to the Council's Second (Social) Committee, a "sessional" committee on which the 54 members of the Council are represented, although some items are dealt with in plenary meetings without reference to a committee. The

reports of the Social Committee, which contain draft resolutions and draft decisions, are submitted to the Council for consideration and final action in plenary meetings.

The Commission on Human Rights which constitutes the most important element in the human rights programme of the United Nations operates under the rules and procedure established by ECOSOC for its functional commissions. The Commission is composed of 43 members; 11 from Africa, 9 from Asia, 8 from Latin America, 10 from Western Europe and 5 from the socialist States of Europe. India has been a member of the Human Rights Commission since its very inception. There is extensive participation in the work of the Commission by States not members of the Commission, national liberation movements, specialized agencies, intergovernmental and non-governmental organizations which attend the meetings as observers.

The Sub-Commission on Prevention of Discrimination and Protection of Minorities was established by the Commission under the authority of ECOSOC in 1946. The Sub-Commission is made up of 26 members elected by the Commission who serve in their capacity as individuals and independent experts. Their composition is 7 from Africa, 5 from Asia, 5 from Latin America, 6 from Western Europe and 3 from the socialist States of Europe.

The most important development in both the Commission and the Sub-Commission has been the evolution, over the years, of practices and conventions which determine the manner in which specific human rights issues are dealt with in these bodies. Both the Commission and the Sub-Commission have set up a number of subsidiary working groups and appoint special rapporteurs on individual country situations as also on thematic issues to help in exercising their respective mandates. Some of the important Groups are: the *Ad hoc* Working Group of Experts on Southern Africa; the Working Group to examine situations which appear to reveal a consistent pattern of gross violations of human rights; the Working Group on enforced or involuntary disappearances and the Working Group of governmental experts on the right to development. Some of the rapporteurs of the Commission have been dealing with important contemporary issues such as summary or arbitrary executions, religious intolerance, mass exoduses and mercenaries.

The main work of the Commission is to encourage respect for human rights and fundamental freedoms all over the world. The Sub-Commission assists the Commission in carrying out this basic function. One of the main activities for promoting this objective is the drafting of International Treaties and Declarations on Human Rights. The Commission has elaborated the drafts on some 13 international instruments since its inception, including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Cov-

enant on Economic, Social and Cultural Rights. In more recent years, the Commission has drafted instruments on racial discrimination, intolerance based on religion or belief, torture and the right to development.

The Commission and the Sub-Commission also consider situations concerning violations of human rights and fundamental freedoms in any part of the world. These are discussed by the Commission and the Sub-Commission in open or closed meetings (1503 procedure). In the open meetings, Governments and NGOs present information on violations and the Governments criticized are often there to present clarifications and reply.

Currently, the Commission has appointed experts, special rapporteurs and special representatives for fact-finding on specific countries, such as Afghanistan, Chile, El Salvador, Guatemala and Iran. They seek, through persuasion and dialogue, to prevent and eliminate such violations. They make recommendations on measures to ensure compliance with the universally recognised norms of human rights and the Commission, in particular, offers and provides upon request, suitable assistance through the programme of advisory services of the Centre for Human Rights.

In urgent cases, the United Nations can intervene with the Government concerned, appealing for information regarding disappearances, impending executions—when the minimum standards appear not to have been met—or cases of torture. Such urgent appeals have in many cases met with positive responses from the Governments.

Several organs of the United Nations have established procedures for handling complaints concerning human rights violations received from individuals and organizations. Of particular importance and interest is the confidential procedure established in the Human Rights Commission and the Sub-Commission to examine communications relevant to gross violation of human rights. ECOSOC consolidated human rights communications procedure in resolution 728 F (XXVIII) of 30 July 1959. The resolution, *inter alia*, requested the Secretary General

(*a*) To compile and distribute to members of the Commission on Human Rights before each session a non-confidential list containing a brief indication of the substance of each communication, however addressed, which deals with the principles involved in the promotion of universal respect for, and observance of, human rights and to divulge the identity of the authors of such communications unless they indicate that they wish their names to remain confidential;

(*b*) To compile before each session of the Commission a confidential list containing a brief indication of the substance of other communications concerning human rights, however addressed, and to furnish this list to members of the Commission, in private meeting, without divulging the identity of the authors of communications except in cases where the authors state that they have already divulged or intend to divulge their names or that they have no objection to their names being divulged;

(*c*) To enable the members of the Commission, upon request, to consult the originals of communications dealing with the principles involved in the promotion of universal respect for, and observance of, human rights;

(*d*) To inform the writers of all communications concerning human rights, however addressed, that their communications will be handled in accordance with this resolution, indicating that the Commission has no power to take any action in regard to any complaint concerning human rights;

(*e*) To furnish each Member State concerned with a copy of any communication concerning human rights which refers explicitly to that State or to territories under its jurisdiction, without divulging the identity of the author, except as provided for in sub-paragraph (*b*) above;

(*f*) To ask Governments sending replies to communications brought to their attention in accordance with sub-paragraph (*e*) whether they wish their replies to be presented to the Commission in summary form or in full.

In the resolution, the Council further provided that members of the Sub-Commission should have with respect to communications dealing with discrimination and minorities, the same facilities as were enjoyed by the members.

The procedure for dealing with communications relating to violation of human rights and fundamental freedoms was formalized and finalized by ECOSOC in resolution 1503 (XLVIII) of 27 May 1970. The resolution is entitled "Procedure for dealing with communications relating to violations of human rights and fundamental freedoms". The resolution authorized the Sub-Commission on Prevention of Discrimination and Protection of Minorities to appoint a working group consisting of not more than five of its members, with due regard to geographical distribution, to meet once a year in private meetings for a period not exceeding 10 days immediately before the session of the Sub-Commission to consider all the communications including replies from Governments thereon, received by the Secretary-General under Council Resolution 728 F (XXVIII) of 30 July 1959 with a view to bringing to the attention of the Sub-Commission those communications, together with replies from Governments, if any, which appeared to reveal a consistent pattern of gross and reliably attested violations of human rights and fundamental freedoms within the terms of reference of the Sub-Commission.

In dealing with the admissibility of such communications the Sub-Commission's procedure provides under the heading "Standards and Criteria" that the object of the communication must not be inconsistent with the relevant principles of the Charter or the Universal Declaration of Human Rights or of other applicable instruments in the field of human rights. Under the criteria so laid down the communication shall be admissible only if after consideration thereof together with the replies, if any, of the Governments concerned that there are reasonable grounds to believe that they may reveal a consistent pattern of gross and reliably attested violations of human rights and fundamental freedoms, including policies of

racial discrimination and segregation and *apartheid* of any country, including colonial and other dependent countries and peoples.

The communications may originate from a person or a group of persons who, it can be reasonably presumed, are victims of the violations and also from any person or group of persons who have direct and reliable knowledge of those violations. Communications from non-governmental organizations are admissible if the organization concerned acts in good faith in accordance with recognized principles of human rights, not resorting to politically motivated stands contrary to the provisions of the Charter and has direct and reliable knowledge of such violations. Communications are not inadmissible solely because the knowledge of the individual authors is second hand, provided that they are accompanied by clear evidence. Anonymous communications are inadmissible.

The author of a communication, whether an individual, a group of individuals or an organization, must be clearly identified. However, the Sub-Commission has not to divulge the identity of the authors except where the authors themselves state that they have already divulged or have no objection to their names being divulged.

The communication must contain a description of the facts and must indicate the purpose of the petition and the rights that have been violated. Communications are inadmissible if their language is essentially abusive and, in particular, if they contain insulting references to the State against which the complaint is directed. Very often such communications are considered by deletion of the abusive language so as to deal with the substance in those communications. Any multiplicity is avoided by providing for the avoidance of using this procedure, when it overlaps with the existing procedures, for the exhaustion of domestic remedies and for the exclusion of the repeated submission to United Nations organs of communications already settled in accordance with human rights principles. Care is taken to see that the functions of the specialized agencies of the United Nations are not prejudiced and that the domestic remedies are exhausted, unless the domestic remedies would be ineffective or unreasonably prolonged. This procedure has been applied by the Working Group on Communications and by the Sub-Commission since 1972. Several thousand communications are considered confidentially first by the Working Group which submits a report to the Sub-Commission. The Sub-Commission discusses this report at its meetings held in closed sessions and adopts a resolution in the matter. This confidential resolution is examined and considered by the Commission. While giving such consideration, Governments accused of violations are invited to send representatives to address the Commission and to answer any question put by the Commission. Several courses are open to the Commission including dropping the motion, keeping the situation under review, or using advisory services of the Secretariat for the purpose of assisting the States in meeting the situation. Text of the relevant recommendations of the

Commission is sent to the Governments directly concerned in order to facilitate their participation in the examination of situations concerning their countries. The extreme step of imposing a sanction against a country has never been used till today. This is one of the most important functions of the Commission and the Sub-Commission.

The United Nations forum has also a machinery for investigating individual complaints. The Human Rights Committee is constituted under Part IV of the International Covenant on Civil and Political Rights. In the implementation of the provisions of this Covenant the Optional Protocol to the International Covenant on Civil and Political Rights authorizes the Human Rights Committee to receive and consider communications from individuals claiming to be the victims of violations of any of the rights set forth in the Covenant. The procedure provided under the Optional Protocol stipulates that the Committee shall bring any communication submitted to it under the Protocol to the attention of the State party to the Protocol alleged to be violating any provision of the Covenant. Within six months, the receiving State has to submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State. The communication is inadmissible when it is anonymous or when the Committee considers it to be an abuse of the right of submission of such communications or incompatible with the provisions of the Covenant or when the individual has not exhausted all available domestic remedies before submitting the communication. Though the communications are confidential and examined in closed meeting, the text of the final decision of the Committee thereon is published. The Committee forwards its views to the State party concerned and the individual.

The main difference between the procedure under resolution 1503 (XLVIII) and the procedure under the Optional Protocol is that (i) the former is concerned with the examination of situations whereas the latter is concerned with the examination of individual complaints. There is, thus, no overlapping or duplication of work involved in the implementation of the two procedures; (ii) the former is based on a resolution of the United Nations organ and its implementation depends largely on the voluntary co-operation of the States, whereas the latter is based on a binding international treaty under which the State authorities have accepted the application of a specific procedure for the examination of certain claims brought against them; (iii) the former is applicable with regard to all States, whereas the latter is applicable only in regard to the States parties to the Optional Protocol; (iv) the former embraces violations of all human rights as recognized in the Universal Declaration of Human Rights, whereas the latter is restricted to those civil and political rights which are protected by the International Covenant on Civil and Political Rights; (v) the former is applicable to communications from any person, group of persons or non-governmental organizations that claim to have reliable knowledge, direct or

second-hand, of the alleged violations, whereas the latter requires a certain standing by the author, i.e., the communication must either be signed by the alleged victim or by his duly appointed representative or by someone having the authority to act on behalf of the alleged victim.

For each of the major international instruments, such as the two Covenants on Civil and Political and on Economic, Social and Cultural Rights and the International Convention on the Elimination of All Forms of Racial Discrimination, special monitoring bodies have been set up to oversee the implementation by the States parties to the instruments. The important United Nations bodies overseeing the implementation of the various instruments are: the Human Rights Committee; the Committee on Economic, Social and Cultural Rights; the Committee on the Elimination of Discrimination against Women; the Committee against Torture; and the Committee on the Elimination of Racial Discrimination.

In discussing possible guidelines and priorities that should be accorded to different aspects of the activities of the United Nations human rights forums, it will have to be remembered that the present financial difficulties of the Organization cannot be whisked away in the coming years. This would entail careful planning so that the essential elements of the human rights activity within the human rights system remain unaffected. Great care and selectivity will be required in deciding upon the priorities of the future human rights programmes so that their effectiveness is in no way reduced. Given the present resource constraints, the stress must necessarily be on consolidation and making the endeavours of the various human rights bodies more practical and effective. There would be little to gain at the present juncture from an academic discussion on new institutions and arrangements which could be set up within the United Nations system such as a United Nations High Commission for Human Rights or Regional Human Rights Commissions.

In exploring ways and means of increasing the effectiveness of the existing human rights institutions, the role of the Sub-Commission deserves special mention. Even though Sub-Commission members are nominated by member countries of the United Nations and are elected by the Commission, they are expected to work as a group of independent experts serving in their individual capacity. Moreover, the Sub-Commission examines specific human rights-related issues at the behest of the Commission albeit with much greater freedom of action, since its members are not encumbered by "reasons of state". It is due to this reason that interesting new ideas on a variety of human rights issues germinate in the Sub-Commission which serves as a think-tank of the United Nations on human rights issues.

The Sub-Commission has a very wide mandate. At its very first session in 1947, the Commission on Human Rights established the Sub-Commission to undertake studies and make recommendations on pre-

vention of discrimination of any kind relating to human rights and fundamental freedoms and the protection of racial, religious and linguistic minorities and to perform any other functions entrusted to it by ECOSOC or by the Commission. In recent years, the Sub-Commission had focused its attention on exploitation of child labour and prostitutes and protection of the rights of indigenous populations which have faced extinction in the past two or three centuries in the continents of North America and Australia. Recent studies which have received high commendation relate to the independence and impartiality of the judiciary and traditional practices affecting the health of women and children.

At the recently concluded Fortieth Session the Sub-Commission transmitted a record number of studies and declarations to the Commission on Human Rights including the following:

(*a*) Draft Optional Protocol against the Death penalty;

(*b*) Draft Declaration on the Independence and Impartiality of the Judiciary, Jurors and Assessors and Independence of lawyers;

(*c*) Draft Body of Principles to Mentally-ill Persons and

(*d*) Draft Guidelines Applicable to Computerized Personal Files.

The standard-setting role of the United Nations system which has matured over the years, with the International Covenants providing the basic framework within which human rights and fundamental freedoms could be further protected and promoted requires to be continued. New international human rights instruments continue to be finalized and adopted. The Convention against Torture has now been followed by the Declaration on the Right to Development and the United Nations is very close to the adoption of a Convention on the Rights of the Child. Implementation goes hand in hand with codification. In this area the matter of concern is the increasing burden of reporting obligations on the States and the progressive inability of some of the treaty bodies to cope with the work that lies before them. A case in point is the state of the Committee on the Elimination of Racial Discrimination which has over 70 reports to consider but which cannot meet to consider them because States parties to the Convention on the Elimination of All Forms of Racial Discrimination have not paid their dues.

International and regional co-operation is an essential prerequisite to create the proper atmosphere within which the universal enjoyment of rights and freedoms can be effectively promoted. In this connection, further work by the United Nations in developing information activities and expanding advisory services in the area should be actively promoted. The United Nations has recently appointed an Under-Secretary-General rank official, the highest ever, to head the Centre for Human Rights. Since taking charge of his office, a little more than a year ago, he has substantially upgraded the secretariat's commitment to increasing the public information and education activity and has strengthened collaboration with the wider

human rights community through the setting up of a new section in the secretariat dealing with external relations. The expanded publication programme is not only welcome because of the eye-catching brochures and pamphlets that are being brought out now by the United Nations but because these provide the necessary link between the work accomplished within the human rights bodies and the larger human rights constituency. Further evolution of standards will have no meaning unless they are widely disseminated and incorporated into national laws. International standards must also be understood by the people who are intended to be the ultimate beneficiaries of this exercise.

In the coming years, international and regional action must focus also on the new areas of co-operation thrown up in the process of the progressive unfolding of a relatively new set of principles over the past two decades encompassing new political realities and new ideas of our times. A case in point is the right to development and the right to food which are of special relevance to developing countries such as India.

The importance of national institutions in the protection and promotion of human rights and fundamental freedoms is self-evident. It is national governments which are primarily responsible for giving effect to the universally recognized principles enshrined in the two Covenants and the secretariat should do all that it can, within its resources, to assist and advise governments, at their request, in the discharge of their responsibilities.

One of the primary responsibilities of the United Nations human rights bodies is to continue to focus on the denial of rights and freedoms to large sections of humanity on grounds of colour, race, sex, community, religion or belief. In this area the effort should be towards achieving the largest possible measure of consensus on the most blatant and persistent of such violations as *apartheid*. At the same time, the temptation of taking opportunistic action against countries who have a generally good overall human rights record should be eschewed. Judgement of human rights violations is a sensitive area and the debates in the human rights forums sometimes assume a political tone. This is perhaps unavoidable. But so far as possible care should be taken to handle issues with sympathy and consideration: if not, the delicate balance and confidence which is the basis of multilateral action in this area will be seriously compromised. Those who want to improve human rights in their country should be encouraged and not condemned. There should be an on-going dialogue with the erring countries to persuade them to turn over a new leaf.

Reviewing at a glance the present concern in terms of study and research of the Commission and Sub-Commission, one is rather inclined to say that the emphasis is more in the direction of civil and political rights of the individual. Some attempts were made to link these concerns with those emerging from a recognition of economic, social and cultural rights at a

level of the working groups on slavery and indigenous peoples. Yet they were not dealt with as such specifically in this forum. Thus, much less attention was given to the human rights questions based on group considerations or the collective rights as distinguished from the rights of the individual. It is rather a lopsided picture which merits due assessment so that questions and issues arising out of economic, social and cultural rights are given a fair and equal chance. The absence or abuse of these economic, social or cultural rights results in tensions that are accompanied by violence and counter-violence. We are far from a true recognition of these rights on a world level. Hopefully in the near future, we may be able to promote a better understanding of economic, social and cultural rights. Already, this work has begun with a study on the Right to Food by Mr. Asbjørn Eide.

It must be remembered that human rights are indivisible and interdependent. The enjoyment of economic, social and cultural rights is a *sine qua non* for the effective enjoyment of civil and political rights. At the same time civil and political rights should not be abridged for securing economic, social and cultural rights. In this connection, it is heartening to note that at the fortieth session the Sub-Commission named a special rapporteur on economic, social and cultural rights. This, to some extent, has removed the imbalance. This is a welcome trend which should be continued.

To promote awareness of the basic human rights and fundamental freedoms is a task of prime importance. The respect for human rights cannot exist without that awareness. This respect must be inculcated among the citizens of the world at an early age. Human rights should become a part of the curricula for children in schools. Only an integration of human rights into the education of children through the United Nations human rights systems will help develop attitudes and approaches for the protection and promotion of human rights.

The proceedings in the field of human rights in the various United Nations forums are made meaningful and productive by the participation of the non-governmental organizations. Ultimately NGOs are the link between the ordinary men and women on the one hand and on the other official bodies, national and international. It is they who translate the Universal Declaration of human rights into action at the grass-roots level. They are responsible for spreading consciousness about the basic human rights and fundamental freedoms among the citizens of the world. They expose their violations. They mould public opinion against such violations. They are barefoot volunteers and disseminators of information in the field of human rights. They are the social activists to take ahead the movement in the field of human rights. They ought to be recognized and encouraged both in the national and international forums for human rights. In the words of Mr. René Cassin (France), a former Chairman of the Commission on Human Rights,

The last but not least of the three functions of non-governmental organizations is that of stirring official bodies to action. It is impossible to say how many problems involving human rights would never have got on the agendas of these bodies but for the initiative or indirect action of non-governmental organizations.

It is for this reason that the NGOs have been given a consultative status in the various United Nations bodies.

Non-governmental organizations are divided into three groups: those in Category I, which have a basic interest in most of the activities of ECOSOC; those in Category II, which have a special competence but are concerned with only a few of ECOSOC's activities; and those with a significant contribution to make to ECOSOC's work, which are placed on a roster for ad hoc consultations. All these organizations usually send observers to public meetings of the Council, its commissions, sub-commissions and other subsidiary bodies.

Thus, the United Nations bodies, the United Nations Secretariat, the States and the NGOs are the four wheels of the chariot of human rights. All these must work in harmony and unison to take the chariot of human rights ahead.

Each one of them has a special significance. The United Nations and its bodies have not only provided the corpus of international instruments on human rights but have set up an elaborate machinery to implement them. The Secretariat provides the necessary back-up support for the effective co-ordination between the United Nations human rights organs and the member States of the United Nations. Human rights ultimately exist in the various States and not in international forums. It is the responsibility of the nation States to abide by their commitments to the International Bill of Rights. Finally, it is NGOs who express the aspirations and frustrations of persons and groups. The implementation of human rights is predicated on the interaction of these four actors.

Today, there is an improved international environment that is having a beneficial impact on human rights. The new détente between the super-Powers, the forward movement in the field of disarmament, the cease-fire between Iran and Iraq and hopes of a breakthrough in Namibia and Kampuchea have all contributed to the new climate. Mr. Jan Martenson has aptly described the present times as "springtime for human rights".

May I conclude by expressing the hope on behalf of all of us that this climate will continue to improve and bring nearer the goal of realization of the basic human rights and fundamental freedoms for all the peoples of the world.

Human rights as an element of foreign policy

*Marc Bossuyt**

In recent years, the importance of human rights in foreign policy has been the subject of much discussion. At certain times—and in particular around 10 December—we hear political leaders declare that they attach the greatest importance to human rights and that human rights constitute an important element of their foreign policy. Representatives of non-governmental organizations concerned with human rights insist just as regularly that more importance should be attached to human rights and often deplore the fact that—notwithstanding the declarations of political leaders—human rights are very seldom translated into action, which all too often remains dominated by what is now called *realpolitik*.

It seems appropriate, therefore, to ask what should constitute "a human rights policy in foreign relations". The essence of the matter is what place the protection of human rights *can* and *should* hold in foreign policy. The Charter of the United Nations must be the starting point for such a discussion.

In the Charter of the United Nations, respect for human rights—together with the maintenance of peace and security and economic development—are referred to as being the main purposes of the United Nations. Since the Organization was founded immediately after the Second World War, its attention was originally focused mainly on the problems of peace and security, albeit with varying success. Especially after decolonization, attention became increasingly focused on economic development. The protection of human rights also gradually came to receive more attention.

It is clear from the Charter that these three principal goals must be seen as closely interrelated. Thus, economic development and the protection of human rights are viewed as necessary conditions for the preservation of peace and security. The Charter rightly holds that peace is threatened when economic differences in the standard of living of peoples are too large or when serious violations of human rights occur.

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A similar interdependence can be seen if one of the other goals is taken as a point of departure. Harmonious economic development is not only impossible to achieve without peace and security, but would be meaningless if human rights were not respected. At the same time, respect for human rights can be fully realized only in a climate of peace and security and where there is some degree of economic development.

The interdependence of these three goals does not mean, however, that it would be impossible to pursue them individually. They are of great value in themselves and one cannot be subordinated, still less sacrificed, to another. They should therefore be pursued fully and simultaneously. Any foreign policy that neglects one of these three goals would be unbalanced and therefore defective.

A. Implications of the independent nature of a human rights policy

It may be useful to look in more depth at the implications of the independent nature of these goals for human rights policy. First of all, some thoughts on the relationship between human rights and peace and security; then some thoughts on human rights and economic development.

1. Human rights policy and peace and security

There is in general no great danger of the pursuit of peace and security being subordinated to a human rights policy. It is unlikely, and even less desirable, that the dissatisfaction of one State with the human rights policy of another State should take the form of armed aggression. A great variety of perfectly legitimate means of persuasion can and should be employed wherever possible to encourage other States to respect human rights. Armed intervention or aggression, however, are clearly not part of such legitimate means.

It would therefore be wrong to make progress in the maintenance of peace and security—for example, through confidence-building measures or the conclusion of disarmament or arms-reduction agreements—conditional upon changes in the human rights policies of States with which such agreements are being pursued.

It would be just as wrong—and here the likelihood of such an eventuality is much greater—for the conclusion of agreements aimed at the maintenance of peace and security to prevent the expression of concern about human rights violations by the States with which such agreements are concluded.

Either situation would involve a failure to respect the independent nature of the fundamental goals of international relations. One of the goals would then be subordinated to the others. What in the first situation might

be presented as reflecting a particularly strong commitment to respect for human rights could all too easily lead to the second situation, in which the promotion of human rights would be made a secondary element of foreign policy on the pretext of not wishing to jeopardize peace and security.

2. Human rights and economic development

The promotion of economic development may be pursued through the expansion of trade and, in the context of relations between industrialized and developing countries, through development assistance.

An unsatisfactory record on human rights should not in principle lead to the breaking off of trade relations. Such trade takes place only if and when it is in the mutual interest of the two partners. The first partner generally has as much interest in, and derives as much benefit from, trade as the second; otherwise, no trade would take place. Trade in goods, or the purchase and sale of such goods, is carried on at the point of equilibrium (generally determined by price) at which the two partners believe that the transaction is mutually beneficial. If such is not the case, the transaction will not take place.

In principle, human rights considerations do not enter into the matter and there is no reason why they should. States with differing political systems, some of them violating and others respecting human rights, have been trading with one another for ages. It has always been this way and no doubt always will be so. Attempts to "moralize" trade relations by imposing non-economic considerations not only have little chance of being applied in a consistent fashion, but are furthermore likely to prove detrimental to all the parties concerned. This does not prevent economic sanctions from being used on occasion as a political tool. The advisability of using such a tool should, however, be evaluated in the light of its economic or political effectiveness, rather than as a moral—or, indeed, legal—obligation based on human rights considerations.

The likelihood of economic interests being subordinated to human rights considerations is obviously infinitely smaller than the converse. It is much more likely, in fact, that human rights policy would be subordinated to excellent trade relations with States that violate human rights.

There is a very real danger that States, because they maintain excellent trade relations, would be inclined to conceal their concern for human rights. There are unfortunately too many known examples of States which, while officially declaring themselves to be extremely concerned by the human rights situation in the world, carefully conceal this concern in their everyday dealings as soon as there is the least fear that a potential trading partner which shows little concern for its human rights obligations might be offended by even the mildest criticism of its record on human rights.

A balanced foreign policy therefore calls for human rights to be promoted as an independent goal. In this way, no doubt can remain about whether this goal might be set aside in favour of so-called "higher" goals. An independent human rights policy does not, in fact, require enormous sacrifice. What it does require above all is that we should at all times make clear our firm conviction that all States have the obligation under international law to respect human rights. It cannot be repeated too often that, whatever the special relationships that may arise from political or military alliances or from excellent trade relations they cannot be allowed to undermine resolve on the principles of human rights protection.

We can never evade the obligation to defend human rights—in a bilateral or multilateral context, publicly or confidentially as the case may be, but always without ambiguity. A lack of firmness on principles in this respect would endanger the reputation of States which claim to be committed to the observance of human rights both in respect of their own citizens and in respect of peoples who are victims of human rights violations. Furthermore, it would give the impression that declarations concerning human rights represented only a political weapon and the credibility of such declarations would thus be seriously undermined.

B. Human rights and development assistance

There is no other demain in which the tension between the various goals of foreign policy is so clearly discernible as in the relationship between human rights and development assistance. This relationship therefore deserves particular attention.

1. Development assistance: a means of exerting pressure to penalize human rights violations?

The basic question is whether or not it is appropriate to stop or suspend development assistance in order to exert pressure in the event of a violation of human rights. It seems to me that the utmost caution is called for here. We should not lose sight of the fact that co-operation for development has its own objectives, for the purposes of which the effect of such co-operation on the human rights situation must, of course, nevertheless always be taken into consideration.

Co-operation for development is justified only to the extent that it benefits the needy population. Co-operation that fails to meet the population's needs and benefits only those in power and certain other privileged persons would obviously be unjustified. In each instance, therefore, it is essential to see to it that development assistance is beneficial—directly or at least indirectly—to the people in need.

Where the Government of the developing country in question shows little concern for respect for human rights, even greater caution has to be exercised in regard to development assistance. If the human rights situation worsens considerably, the policy of development assistance for that country would probably have to be altered. It would be necessary at that point to determine how far assistance could be continued with a view to improving the standard of living of the population.

In the majority of cases, however, the existence of violations of human rights by the Government concerned is not in itself sufficient reason to cut off assistance to the population in need. Only where the Government concerned prevents assistance from reaching those for whom it is intended would it be appropriate to suspend assistance. In other cases, the population would be doubly penalized by cutting off development assistance. It would be the victim first of violations of human rights by its own Government, and then of the deprivation of assistance by the donor countries.

The greatest restraint must therefore be exercised in using development assistance as a sanction against human rights violations. At the same time, greater importance must be attached to the human rights dimension in formulating development assistance policies.

2. Human rights dimension in development assistance policies

A well-thought out development assistance policy is bound to be beneficial to human rights. In this context, what comes to mind first of all are economic and social rights, such as the right to food, the right to education, the right to health care, the right to work, etc. Many development projects are directly conducive to the realization of economic and social rights.

In the same context, less importance is generally attached to the promotion of conventional civil rights. In principle, respect for conventional civil rights does not require any major financial effort on the part of the Government concerned and large-scale financial assistance from other countries is therefore not needed for this purpose. It should not be forgotten, however, that a considerable number of developing countries lack the minimum institutional infrastructure to ensure that conventional civil rights are respected.

A judicial and police system which functions satisfactorily is essential for the respect of conventional civil rights. In some cases—fortunately, quite rare ones—police protection is needed to ensure that citizens can exercise their liberties without hindrance from their fellow citizens. Where necessary, the police has a duty, in particular, to see to it that citizens can exercise their right to freedom of expression and their right of peaceful assembly. It is of the utmost importance that citizens should be able to count on an independent judiciary capable of taking action in cases where

their liberties are infringed by their fellow citizens or—as is more often the case—by the authorities.

A properly functioning judicial system requires judges who have received the necessary legal training. Legal training requires faculties of law. A faculty of law requires professors, a library and a certain infrastructure. The functioning of the courts itself requires a minimum infrastructure. Without buildings, means of communication, office equipment and legal documentation, it is impossible to deliver sound judgements.

The proper functioning of a State subject to the rule of law also requires that laws should be drawn up by competent legal experts and that such laws should be made accessible to all subjects of law and, in particular, to those who practise the law. Laws must therefore be published and duly codified. These are all elementary requirements for the functioning of a State subject to the rule of law.

The above requirements are so self-evident that most developed countries, as well as the majority of the most advanced developing countries, believe they have been satisfied. In a number of developing countries, however, this is not the case. Donor countries must therefore attach greater importance to this question and allow sufficient latitude in their development assistance policies for these needs to be met, which is generally possible with fairly limited financial resources.

Effective operation of regional arrangements for the protection of human rights also requires adequate financial means, which it is difficult for the developing countries to provide. Although there is an understandable resistance on the part of the developing countries to any interference in their human rights policies by other regional groups, a more constructive attitude may be expected with regard to the activities of the protection machinery of their own region. Aid or financial support from developed countries concerned by the human rights situation in these regions, possibly in the form of contributions to voluntary funds, is therefore to be highly recommended.

Conclusion

The purpose of the foregoing discussion has been simply to outline some elements capable of providing a theoretical basis for an independent human rights policy as part of a balanced foreign policy. If such a policy is to be applied, leaders and decision-makers must be aware of what is and is not involved in an independent human rights policy. It would be a Utopian dream to imagine a foreign policy exclusively governed by human rights considerations. Nevertheless, it is essential to urge that greater attention be attached to the "human rights" dimension in foreign policy. An active

commitment in this respect, in both the bilateral and the multilateral context, is vital. Democratic countries may be called upon to demonstrate systematically and without inhibition their faith in democratic values and human rights. Co-operation for development is the area in which greater attention to the "human rights" dimension is most required. However, there can be no hope of achieving a coherent, principled and credible policy in this regard unless the promotion of human rights is pursued as an independent component of foreign policy.

Defending the human rights of parliamentarians

*Pierre Cornillon**

> The member of Parliament is just as indispensable to human rights as freedom is to him, for without it he could neither become nor remain a member of Parliament.
>
> René CASSIN

If there is one action which, by its very nature, the Inter-Parliamentary Union was bound to embark upon, it is that of defending the human rights of Parliamentarians. Indeed, of all the various types of activities it has undertaken to promote human rights, its action in this respect, which began in January 1977, has undoubtedly been the most significant and original of the past fifteen years.

Why, how and with what results is this action undertaken?

This article aims to answer these questions for the readers of the *Bulletin of Human Rights*.

A well-considered choice

In 1974, the Inter-Parliamentary Conference, meeting in Tokyo, adopted a resolution on the problem of torture in the world and requested its Committee on Parliamentary, Juridical and Human Rights Questions to study "the possibility of setting up within the Union a procedure for examining and treating communications concerning human rights matters": the study took up the Committee's attention for two years, during which it recapitulated and analysed existing international procedures for individual remedy.

The question which then arose was whether the Union's action should encompass all categories of individuals or be confined only to parliamentarians.

* Secretary-General of the Inter-Parliamentary Union.

Starting from the notion of "grasp all, lose all", the majority of the Union's members concluded that the Organization was not adequately equipped to deal efficiently with the multitude of cases involved in the first option and that, furthermore, this would duplicate the work of organizations in the United Nations system and regional international organizations as well as that of certain non-governmental organizations. It was therefore deemed preferable to deal very thoroughly with just the cases of Members of Parliament. Accordingly, the Council adopted in April 1976 a resolution establishing a Procedure for the Examination and Treatment by the Inter-Parliamentary Union of Communications concerning Violations of the Human Rights of Parliamentarians. This Procedure came into force on 1 January 1977.

In the final analysis, the particular focus of the Union's Procedure reflects its specific composition and one of its main vocations: the promotion of parliamentary institutions.

Protecting a public office and what it symbolizes

The idea is not in any way to place parliamentarians above common mortals, enjoying exceptional rights or special privileges but, through individuals to protect a public office and its reason for being: the resolution establishing the Procedure applied by the Union contains an extremely explicit provision in this respect since it

> stresses that protection of the rights of Parliamentarians is the necessary prerequisite to enable them to protect and promote human rights and fundamental freedoms in their respective countries . . . .

In fact, the choice thus made by the Union has placed it in a favourable position in relation to other international organizations and the debates held and votes cast within the Inter-Parliamentary Council have demonstrated a spirit of solidarity among Parliamentarians that transcends ideologies and partisan views. This solidarity is in fact a key element in the essential role played by the Union's National Groups[1] to follow up the decisions adopted on cases made public and, consequently, in securing practical results.

The Committee on the Human Rights of Parliamentarians

In establishing the Procedure, the Inter-Parliamentary Council set up a body to process the communications received: the Special Committee on

[1] In June 1989, 112 national parliaments were represented in the Union by a National Group. The European Parliament is an Associate Member.

Violations of the Human Rights of Parliamentarians, commonly known as the Special Committee or the Committee on the Human Rights of Parliamentarians. This body is composed of five titular members and five substitutes, each of whom is elected in an individual capacity, on the basis of his or her qualifications, and represents his or her geopolitical region.

At present, the Committee is made up of the following figures (listed by alphabetical order, titular members first):

Mr. Y. Agboyibor, Member of the National Assembly of Togo, and Mr. P. Chinamasa, Member of the State of Zimbabwe;

Mr. S. Barcs, Member of the Parliament of Hungary, and Mr. P. Biacs, Member of the same Parliament;

Mrs. J. Neiman, Member of the Senate of Canada, and Mrs. J. Meier, Member of the Council of States of Switzerland;

Mr. D. P. Vijandran, Vice-Speaker of the House of Representatives of Malaysia, and Mr. R. S. Roco, Member of the House of Representatives of the Philippines;

Mr. H. Solari Yrigoyen, Member of the Senate of Argentina, and Mr. H. Batalla, Member of the Senate of Uruguay.

The members of the Committee are elected by the Inter-Parliamentary Council for a term of five years, on the basis of candidatures submitted by the regional caucuses or one or more National Groups of the region concerned. The Committee elects its Chairman and elects at the same time a Vice-Chairman to replace the Chairman in the event of his/her resignation, loss of parliamentary mandate or death.

At present, Senator Solari Yrigoyen is Committee Chairman and Senator Neiman is Vice-Chairman.

The Committee meets *in camera* four times a year (usually in February, in April, in July and in September or October) for three or four days each session. It reports to the Inter-Parliamentary Council at its two annual sessions on the cases which it deems should be made public and generally submits draft resolutions to it. The Council deliberates in public and adopts resolutions.

Members of the Committee are of course bound by the confidential nature of the information submitted to them. They cannot take part in the proceedings when the Committee discusses the case of a parliamentarian from their own country. In that case, they receive extensive excerpts or a very detailed summary of the complaint (the identity of the source not being disclosed unless otherwise specified) and they may provide written or oral information prior to the proceedings, but the Committee deliberates and reaches its decision in their absence.

At the instance of its first Chairman, Mr. André Chandernagor, former President of the Inter-Parliamentary Council and now First President of the French Cour des Comptes, the Committee established in January 1977 the practical ways and means for applying the Procedure adopted by the Inter-Parliamentary Council.

The subject and source of complaints

The very text of the Procedure states that it

> shall be applicable to members of Parliament who are or who have been subjected to arbitrary actions during the exercise of the mandate which had been entrusted to them, whether the Parliament is sitting, in recess or has been dissolved as the result of unconstitutional or extraordinary measures.

The Inter-Parliamentary Union examines the case of any member of Parliament provided that the latter meets the stipulations of article 3 of the Statutes of the Organization (viz. that it is "constituted in conformity with the laws of a sovereign State of which it represents the population and on the territory of which it functions"), and it does not make any distinction among parliamentarians based on the mode of election or appointment.

The Committee on the Human Rights of Parliamentarians has had to rule on its own competence regarding cases of titular or substitute parliamentarians in office, and it has been established that communications may refer only to members of national parliaments (whether or not they belong to the Union), to the exclusion of members of regional and local assemblies and assemblies of federated States. It has also been established, with regard to alternate members of Parliament, that admissibility depends on the nature of the function involved and the ways in which it is exercised, which differ from country to country.

The Committee has also had to rule on the admissibility of complaints concerning the situation of members of assemblies which had been dissolved as the result of an unconstitutional process (many complaints have concerned former parliamentarians held without charge or trial or summarily sentenced, or former parliamentarians in voluntary or involuntary exile), and it has been established that the Union is competent provided that the allegations concern events which reportedly took place or began during the legal duration of the parliamentary mandate of the person concerned. This is one of the main formal criteria of admissibility.

It has had to decide whether it should regard as admissible communications concerning the situation of parliamentarians whose mandate had legally lapsed or who had given up their seat before the alleged events began and it has ruled that it is not competent in such cases.

It has also had to assess the admissibility of complaints concerning elected members not yet sworn in and concerning persons whose election has been invalidated. In the former case, admissibility has been made contingent on recognition, in accordance with the legislation of the country concerned, of the person's parliamentary status, while in the latter case, admissibility has hinged on the cogency and procedures for invalidation of the election according to the legislation in force.

As to sources of communication, the Procedure has established four categories: the parliamentarian who considers his rights to have been violated (or a person authorized by him to make such communications); any parliamentarian in office, whether or not he is a member of the Inter-Parliamentary Union, and any member of the parliament which has recently ceased to exist through unconstitutional or extraordinary measures; certain international organizations competent in the field of human rights (the United Nations and its specialized agencies, intergovernmental and interparliamentary organizations, and international non-governmental organizations competent in human rights matters and having consultative status with the United Nations Economic and Social Council); and such other sources as the Committee may unanimously decide to accept (these have often been relatives of the alleged victim).

The Committee is on the other hand debarred from taking up a case on its own initiative or that of one of its members, however well-known and serious the case may be however natural the Committee's intervention may in the event appear to be.

It will further be noted that a complaint cannot be deemed inadmissible on the grounds that a similar complaint has been lodged with another international investigatory and settlement authority. Likewise, the fact that domestic remedies available to the victim have not been exhausted is not grounds for inadmissibility. On this latter point, it has often proved to be the case that, especially under certain circumstances, domestic remedies existing on paper are ineffective in practice.

Action supported by fundamental principles

In common with all international bodies composed of national representatives, the Union is an instrument of dialogue and co-operation and whatever influence it may exert is commensurate with the moral weight it carries. With regard to the defence of parliamentarians, this is clearly rooted in constantly and strictly respected principles.

One of the essential principles on which the Union bases its defence of the human rights of parliamentarians is that the Procedure applies, without

discrimination, to parliamentarians of all countries. For the Union believes that

> the defence of human rights is a duty incumbent upon the human community on the basis of the internationally recognized juridical principles set out in the Universal Declaration of Human Rights, in all circumstances, in all countries and under any political system.

In its eyes, respect for fundamental freedoms is an obligation for all States and further becomes legally binding on all those which have ratified international instruments such as the Covenants on human rights.

On the other hand, the Union refrains from using a procedure for the study of individual cases to express judgements on general human rights situations or on political systems. It stresses the fact that its action,

> which is confined to the treatment solely of those individual cases brought before it by sources defined in the Procedure, cannot be interpreted as expressing an opinion, in any sense, concerning any political régime whatever.

The Committee is particularly careful to keep within this precise framework in order to ensure that its activities, based on common criteria applicable to all cases in whatever country they arise, offer the smallest possible foothold for political subjectivity.

As mentioned earlier, the Inter-Parliamentary Council has stressed

> that protection of the rights of parliamentarians is the necessary prerequisite to enable them to protect and promote human rights and fundamental freedoms in their respective countries, and that, in addition, the representative nature of a Parliament closely depends on the respect of the rights of the Members of that Parliament.

Whenever it has had to examine the situation of a national of a country in which a state of exception was in force, the Inter-Parliamentary Council has voiced its conviction that it emerges from Article 4 of the International Covenant on Civil and Political Rights (and, where appropriate, from the provisions of regional human rights instruments) that the derogatory measures which that article authorizes can only be of an exceptional and transitional nature. This interpretation given by the Inter-Parliamentary Council in 1978 was subsequently confirmed by the United Nations.

The Committee is in fact commonly required to hear cases of parliamentarians detained without charge or trial under long-standing emergency legislation which often affords no judicial remedy. Hence it understandably takes a special interest in the work of the United Nations relating to states of exception and that relating to administrative or ministerial detention.

Treatment of complaints

When establishing the Procedure for complaints, the Union set itself the aim of ensuring that no parliamentarian (and, where appropriate, no

former parliamentarian) whose personal situation had been brought to its attention was the victim of arbitrary measures and that, if subjected to judicial proceedings, he enjoyed the guarantees set out in the Constitution and the national legislation of his country and in the international juridical instruments serving as its reference in regard to defence of the rights of parliamentarians. Those are, mainly, the Universal Declaration of Human Rights, the International Covenants on human rights, regional human rights instruments in appropriate cases (the European Convention, the Inter-American Declaration and Convention, the African Charter), the Convention against Torture and the Standard Minimum Rules for the Treatment of Prisoners.

But how can a person whose rights have been violated, or a third party wishing to act on his behalf, approach the Inter-Parliamentary Union? What happens upon receipt of the complaint addressed to the Union? What is to be expected of the Union and how soon? What guarantees are there that the victim or the author of the complaint runs no risk? Answering all these questions will shed light on the quasi-judicial character of the Procedure.

Complaints must be sent in writing to the headquarters of the Inter-Parliamentary Union in Geneva. They must be signed and bear the address of their author, who must state in what capacity he or she is presenting the complaint. They should contain the greatest possible amount of information at the author's disposal and, whenever possible, evidence in support of the allegations. In fact, the Committee drew up in 1977 a model list of items of information for submission. Copies of communications addressed to other organizations and communications not bearing a signature and/or the address of their author naturally do not constitute a formal complaint.

Upon receipt of the complaint, the necessary legal analysis and investigation is undertaken, and such additional information as may be helpful in assessing the case is gathered from the source of communication, the Union's documentation services and other appropriate reference services.

The admissibility of communications is determined by the Committee itself when the complaint is received during a session; between the four annual sessions, it is determined on a preliminary basis by the Secretary-General in consultation with the Chairman of the Committee. In this way, the time it takes to make preliminary inquiries of the authorities of the countries concerned is considerably shortened and a special effort is made to ensure, without prejudice to the formalities involved and the reliability of the investigation, that the period is cut to a minimum in cases of an urgent nature (a parliamentarian sentenced to death, kidnapped, held incommunicado or in administrative detention; a parliamentarian alleged to be ill-

treated or seriously ill, etc.). It is clearly understood, however, that when the Committee is not in session, the Secretary-General and the Chairman may, should they have doubts as to the admissibility of the communication or the desirability of addressing requests for information to the authorities of the country in question, agree to defer such requests until the next meeting of the Committee.

Once admissibility has been established, a very detailed summary of the allegations is transmitted to the authorities of the country in question with a request that they send back their observations and any information likely to enlighten the Committee, before its next session. At this stage, the identity of the source of communication may be disclosed, unless the latter is reluctant in this respect or the Committee considers that such disclosure would put the source at risk. In his correspondence, the Secretary-General is required to inform the authorities of the preliminary and confidential character of the requests, which in no way prejudge the nature of the Committee's subsequent decisions.

When the country concerned is represented in the Union by a National Group, such requests are naturally forwarded to or through it. Otherwise they are sent to the normal correspondent of international organizations, namely, the Minister of Foreign Affairs of the country in question, but account may also be taken of suggestions by the source concerning the authority which could be approached.

If time allows, the Secretary-General is authorized, in consultation with the Chairman of the Committee and without awaiting a Committee session, to determine whether the replies transmitted by the authorities are sufficient to enable the Committee to reach a decision. He may, if necessary, invite the authorities to clarify certain points.

In some cases, this initial approach may prompt the authorities of the country in question to seek a rapid settlement, and the Committee has sometimes been able to close a case at the very next session, or even to take note of a satisfactory settlement before having the opportunity formally to decide on its admissibility.

Either after examination by the Committee or (with the agreement of its Chairman) before such examination, the Secretary-General may be authorized to transmit to the source of communication for observations a summary of the replies conveyed by the authorities of the country in question. This rule is applicable "particularly when new events occur which affect the situation of the parliamentarian concerned". Likewise, any new allegation or information transmitted by the source of communication may be forwarded to the authorities with a request for observations. This procedure guarantees that the information is cross-checked.

It will be noted that for each case, the Secretary-General is required to provide the Committee with a brief report containing observations on formal admissibility, a detailed summary of the allegations, legal references, observations on action that could be taken, particularly when specific suggestions have been made by the source, and observations concerning existing national or international remedies.

Complete confidentiality is of course observed throughout this process.

Confidentiality: pros and cons

How far should the study of a case be carried out confidentially? What advantages and drawbacks are associated with the submission of public reports? These are questions to which there can be no clear-cut answer.

No one can doubt the very obvious advantages of a confidential procedure. But neither can anyone deny that advantages may become hindrances if confidentiality is made the absolute watchword and the State in question therefore runs no risk of a public debate. The victim then forfeits any advantage to the State which is applying a measure deemed to be arbitrary.

In implementing the Procedure, the Union has been faced with thorny choices in this respect, but it may be considered that its choices have so far been made in such a way as to secure maximum effectiveness while respecting its stated principles.

In short, the Union seeks to promote a satisfactory settlement in the shortest possible time while faithfully abiding by an attitude of impartiality.

It is for the Committee to appreciate on a case-by-case basis if and when it becomes advisable to bring a case before the Inter-Parliamentary Council in a public report. For the delegates of a member parliament of the Union, the public procedure can entail an obligation to face critical debate within the Inter-Parliamentary Council, sometimes at several consecutive sessions. It can readily be seen that the possibility of referring a case publicly to the Council is an important weapon in the arsenal of the Committee, which very carefully appraises when to make use of it, having only regard to securing positive developments in the case before it.

The Committee may thus, in extreme circumstances, deem it necessary to make a case public in a very short lapse of time, for example on the second examination of the case, i.e. within three to six months of receipt of the complaint. In other cases, it may conclude that it is in no way necessary or advisable to bring a case before the Council. Various considerations come into play here, particularly of course the co-operation of the

authorities of the countries concerned, but mainly the extent to which the case is moving towards a satisfactory settlement and if such a settlement may be expected in a reasonably short period of time.

As can therefore be seen, a case is treated confidentially only in so far and as long as confidentiality serves its purpose.

On the other hand, when bringing a case to the public attention of the Inter-Parliamentary Council, the Committee continues to protect the security of the sources of communication. For example, it refrains from disclosing in its report the identity of any source requesting anonymity, while mentioning its existence by means of a standard formula ("The source of communication, qualified under the terms of the Procedure, does not wish its identity to be disclosed") and giving the dates of all its communications.

Direct contacts: hearings and missions

In accordance with the Procedure establishd by the Inter-Parliamentary Council, the Committee deliberates and takes decisions *in camera* on the basis of documents. However, it very soon felt the need for direct contacts when studying some cases. As necessary, these have taken the form either of hearings or of on-site missions.

Each of these procedures offers both advantages and drawbacks which it would take too long to amplify in this article. A detailed account of the criteria for organizing a hearing or a mission and the practical arrangements for these two procedures would also be tedious and overly technical.

It will nevertheless be noted that the Committee may, on its own initiative or on request, have to conduct a hearing of one of its members (mention has already been made of the withdrawal rule incumbent on members of the Committee), of a representative of the authorities of the country concerned (representative of a member parliament of the Union, representative of a parliament not affiliated to the Union, representative of a Government or representative of the judicial authorities of the country in question), of the alleged victim or of a third party.

Hearings by the Committee *in corpore* are used as an exceptional measure and only held—at the request of the persons concerned or on the initiative of the Committee itself—if they correspond to a need perceived by the Committee. On the other hand, it has become standard practice on the occasion of Inter-Parliamentary Conferences for the Chairman of the Committee—and sometimes a member of the Committee designated for the purpose—to have contacts with the delegates of countries in which a case is being examined. Such contacts, which are established at the request as well as

on the initiative of the Committee or its Chairman, offer in many respects the advantages of a hearing without cumbersome formality and permit what is often a constructive dialogue.

An on-site visit also undoubtedly remains an exceptional measure and is only decided upon if it corresponds to a need perceived by the Committee or the Inter-Parliamentary Council.

An on-site visit can obviously only take place at the invitation of the authorities of the country concerned or with their prior consent and, in conformity with the Procedure, it must not in any event result directly or indirectly in a value judgement being made of a situation in general or of a political system, whatever it may be. Basically, an on-site visit is aimed at making the authorities of a country aware of the interest taken by the Inter-Parliamentary Union (and through it by the international community) in the treatment and fair settlement of a particular case, at gathering a maximum amount of first-hand and reliable information on an individual case to enable the Committee and the Council to reach a decision in full knowledge of the facts, at inquiring about the observance of fundamental human rights in the case of one or more individuals, at contributing as far as possible to the satisfactory settlement of the case in keeping with the principle of human rights, and in some instances at observing a trial.

It will be noted with special interest that apart from the on-site visits which may be decided upon by the Inter-Parliamentary Council, the Union has often been able to count on initiatives by its National Groups. It not infrequently happens that, in connection with follow-up to a resolution concerning one or more individual cases, a National Group decides not only to establish direct contacts with its opposite number of the country in question at one of the Union's Conferences or on the occasion of a friendly visit, but also to send representatives to intercede on the spot with the highest authorities of the State. As can readily be imagined, such approaches have always proved extremely useful and have very often contributed effectively to the rapid settlement of difficult cases.

Co-operation of the authorities of the country concerned

Apart from the special case of a hearing or an on-site visit, and disregarding the direct contacts which take place on the occasion of Inter-Parliamentary Conferences, contacts with the authorities of the country concerned are conducted by correspondence. The authorities contacted are invited to provide the details requested as soon as possible, the date advanced being generally that of the next Committee session.

Owing to its specific character, the Inter-Parliamentary Union is in a position to enjoy the co-operation of the authorities of most of the countries in question and the activity of its members, whether or not they belong to the parliament of a country concerned.

When the authorities of a country are manifestly unco-operative, in particular when they fail to respond to requests for information addressed to them, the Committee may, in regard to cases examined confidentially, authorize the Secretary-General to signify in writing that the case could be brought to the notice of the Council at a forthcoming session, or it may even include a provision to that effect in its confidential decision. Where cases are examined publicly, the Council may, for its part, be led to draw particular conclusions from a lack of co-operation. It may also rely on the intercession of National Groups and invite them to be especially active in the case in question.

Effective follow-up

One feature of the Procedure applied by the Inter-Parliamentary Union, indeed one guarantee of its effectiveness, is that the Committee is required to continue its study of cases and in particular to examine follow-up action on any decisions of the Inter-Parliamentary Council "until such time as a settlement deemed satisfactory has been achieved".

The action of the Committee does not end therefore with the submission of a public report to the Inter-Parliamentary Council, and that of the Council is not complete when a resolution is adopted; such action continues as long as it is deemed necessary to afford the parliamentarian concerned protection or press for the restoration of his rights.

As has been pointed out, the activity of the Council is itself backed up by that of the National Groups, which may take a variety of forms: report to parliament, parliamentary missions and visits to the countries concerned, transmission of information to the Minister of Foreign Affairs with a request for action (usually the national ambassadors in the countries in question are requested to follow the matter or even to make representations to the authorities of such countries), direct contacts or correspondence with the parliamentary and/or governmental authorities, meeting with the diplomatic representative of the country in question, circulation of the Committee's reports and the Council's decisions, press coverage, etc.

In the Committee's view, the part played by the National Groups in giving effect to the recommendations of the Council is one of the most effective tools at the Union's disposal for defending parliamentarians against infringements of their rights. The Committee may also rely on the action of particular National Groups to complete its information on specific cases.

Study and documentation

The Union could not of course lay claim to serious human rights activity and at the same time dispense with the necessary documentation. Therefore, while drawing upon the substantial amount of constitutional and parliamentary material amassed since 1965 by its International Centre for Parliamentary Documentation, which is also a research and study centre, it opened a specific documentation collection in the early 1970s on human rights, by country and by topic. Its primary aim is naturally to serve the Committee on the Human Rights of Parliamentarians but also, whenever necessary, the standing Committee on Parliamentary, Juridical and Human Rights Questions or *ad hoc* working groups.

Encouraging results

Right from the outset, the Committee had every reason to believe that it could do useful work since, at its very first session in January 1977, it had before it the cases of 12 parliamentarians from six countries. It nevertheless had no idea how frequently it would be called upon to take action.

In their capacity as intermediaries between the ordinary citizen and the executive, parliamentarians are paradoxically both more secure from infringements of human rights than the rest of the population and yet particularly vulnerable to such violations. This is particularly so in some countries or regions of the world where the temptation is great to use force to resolve divergent or conflicting political interests. It is common knowledge, though, that a *coup d'état* or the extended introduction of a state of exception usually signifies "time off" for human rights and the pure and simple abolition of parliament or a substantial reduction in its supervisory power over the executive.

It is therefore far from exceptional for the Union's alarm system to be set off. Today, the world parliamentary population amounts to some 37,000 persons in 147 national parliaments. At the end of 1988, after 11 years of operation, the Committee on the Human Rights of Parliamentarians had taken up 625 individual situations in 52 countries in all regions of the world, i.e. 1.7 per cent of the parliamentarians in over one third of all countries with parliaments.

Of the 540 cases deemed admissible between 1977 and 1988 (in 49 countries), 307, or 56.5 per cent, were those of parliamentarians detained without charge or trial, or imprisoned on a court ruling. Some of these parliamentarians died in detention, but 291 of them, or 94.8 per cent, are now free and several are once more members of the organization—indeed, the current Committee Chairman is one of them.

But while these situations are the most common, they are not the only ones and the Committee has also had before it many cases of infringement of freedom of speech, cases of exile, cases of disappearance, assassination or summary execution, cases of restriction or suspension of civil or political rights, and so forth. No Committee session has ever taken place without at least one new case on the agenda.

The very fact that a procedure introduced such a short time ago has already given rise to such intense activity is a clear indication that it was necessary and even urgent to act on behalf of parliamentarians. Yet there can be no certainty that all parliamentarians suffering an infringement of their rights knew that they could take their case to the Inter-Parliamentary Union or were able to turn to it, directly or indirectly.

It would certainly be wrong to claim that the release of a parliamentarian or the lifting of restrictive measures affecting him results solely from action by the Inter-Parliamentary Union. However, although such events usually depend on a combination of factors or circumstances, it appears that action by the Inter-Parliamentary Union and its members has in many cases been essential, and indeed decisive.

In a few years, the Inter-Parliamentary Union has made great strides in the specific treatment of human rights questions. In this area as in several others, it has expanded its activities by adapting them to the needs of the day and in order to respond more effectively to the hopes and expectations of all those anonymous citizens who, through parliamentarians, demand that human rights be staunchly anchored both in the law and in practice. It had thus helped to implant in the minds of those who make the law, and through their intermediary in the minds of their constituents, an awareness of human rights without which the great principles enshrined in international juridical instruments would remain a dead letter.

At a time when it celebrates the centenary of its founding, the Inter-Parliamentary Union may take rightful pride in the results achieved in this field of its activity.

The international instruments on the protection of human rights in the USSR and their interpretation in USSR judicial practice

*S. I. Gusev**

The history of nations, including our own, convincingly demonstrates that human rights begin with the rights of individuals, and with everyday trifles. I want to emphasize straight away that the international instruments on the protection of human rights play a positive role in observance of human rights in my country too.

In this period of reconstruction and improvement of the political system, the individual and his rights, needs and interests are increasingly at the centre of the Soviet State's attention.

In November 1988 a seminar on "Human Rights and the Administration of Justice", conducted by the United Nations in co-operation with the USSR in connection with the fortieth anniversary of the Universal Declaration of Human Rights, was held in Moscow, where I had the pleasure of delivering a report and welcoming Mr. J. Martenson, Under-Secretary-General of the United Nations and Director of the United Nations Centre for Human Rights, to the Supreme Court of the USSR.

The USSR is a party to 14 of the 22 instruments of international law adopted by the world community as fundamental in the field of human rights. They include the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, and many others.

The enhancement of rights and duties and of their safeguards is regarded as a most important aspect of the strategy for accelerating the country's social and economic development. Reviewing the path trodden by our State, we can state frankly that our conception of the approach to for-

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mulating legislation has now been radically revised. I have in mind M. S. Gorbachev's declaration at the United Nations that all States, regardless of ideological differences, should now join in seeking a way towards the primacy of the idea of common humanity.

Thus, as a result of a definite reappraisal of values, we have grasped that common human standards have priority over the class standards in law, morality and politics. This seems to be the only way of restoring in their entirety such imperishable moral categories as justice, humanity, dignity and clemency, which alone can save mankind from self-destruction. This is the criterion that guides us now in bringing our legislation into line with international standards. This is a matter, first and foremost, of texts directly connected with the protection of human rights.

As you know, the Universal Declaration of Human Rights speaks in particular of equality before the law, protection against arbitrary arrest, the assurance of fair judicial proceedings, renunciation of the retroactive application of laws, freedom of thought, conscience and religion, freedom of peaceful assembly, etc. I will not say that all this is being scrupulously complied with. There are still more than a few different distortions and violations of the legislation in force and announced in our country, but we are not standing still.

The adoption of new and more democratic legislation is in prospect; 77 different draft statutes are ready or in preparation, dealing, *inter alia*, with freedom of conscience, freedom of movement, travel by Soviet citizens from and to the USSR, the press, voluntary societies, bodies engaged in independent public activities, independent social associations, formations and social movements. We propose to expand our participation in the human rights monitoring apparatus. An important step in this direction will be the accession of the USSR to the Optional Protocol to the International Covenant on Civil and Political Rights—which represents a most depoliticized and ideology-free form of monitoring—and its participation in the procedure prescribed by article 41 of the International Covenant on Civil and Political Rights.

Striving for the further development of co-operation in the humanitarian sphere and guided by the aims of international law and order and by the primacy of international law in policy, the Soviet Union has withdrawn the reservations concerning non-recognition of the mandatory jurisdiction of the International Court of Justice which it made to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Prevention and Punishment of the Crime of Genocide, the Convention on the Political Rights of Women, the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, the International Convention on

the Elimination of All Forms of Racial Discrimination and the Convention on the Elimination of All Forms of Discrimination against Women. These, it seems are necessary steps in that direction.

Already, the draft Principles of Criminal Legislation of the USSR and the Union Republics and the draft Act concerning inventive activity which were recently published for nation-wide discussion are clearly based on the priority of the rules of international law. Thus article 1, paragraph 3, of the draft Principles of Criminal Legislation speaks of the need to bring the criminal legislation of the USSR and the Union Republics into conformity with the provisions of the international treaties concluded by the USSR, and article 63 of the draft Act concerning inventive activity bluntly provides that:

> If rules other than those contained in Soviet legislation in the field of invention are laid down by an international treaty of the USSR, the rules of the international treaty shall be applied.

It should be noted with regard to the legislation now in force on the judicial protection of citizens' rights that it is basically in accord with the generally recognized international standards which are traditionally regarded in all countries as the most binding. The principle of the presumption of innocence is affirmed:

> No one may be found guilty of committing a crime and subjected to a criminal penalty save by the sentence of a court and in accordance with the law.

The USSR Supreme Court has made it clear in a guiding decision that the obligation to prove a charge lies on the accuser, that it is impermissible to require the accused (defendant) to prove his innocence, and that any doubts should be interpreted in the defendant's favour. These provisions are fully in accord with article 14, paragraph 2, of the International Covenant on Civil and Political Rights, which provides that:

> Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

In conformity with the provisions of article 14, paragraph 5, of the Covenant, which spells out the right of everyone convicted of a crime to review of his sentence by a higher tribunal, there are also rules of Soviet legislation which provide convicted persons with extensive rights and possibilities of recourse from their sentences through either appellate or supervisory proceedings.

But there is a problem here. Every Union Republic has its own Supreme Court. Judicial proceedings are conducted in the national language, except for the Russian-speaking population. The judicial process in the Republics is sovereign. Consequently an appeal does not lie to the USSR Supreme Court from every judicial decision of the courts of the Republics. For example, if some regional court in the Ukrainian SSR has taken a decision and the Supreme Court has let it stand, the President of the

Supreme Court, considering the decision correct, sometimes refuses to allow an appeal; in that case a citizen of the USSR, being also a citizen of the Union Republic, cannot appeal to the USSR Supreme Court. This is a paradox. I think that this is a definite violation of the human right to judicial protection in the Supreme Court of the State. We are raising the question of changing the Act concerning the Supreme Court of the USSR. The possibilities open to the citizen should not be curtailed; he should have such a right. Otherwise we have a closed circle and local pretensions prevail over the general State interests of the rights of the individual, something which cannot be allowed to happen in judicial practice. That is my position.

Article 14, paragraph 6, of the International Covenant on Civil and Political Rights deals with the right of a citizen, in the event of a miscarriage of justice, to material compensation for the damage suffered. Article 89 of the Principles of Civil Legislation of the USSR and the Union Republics provides that any damage caused by wrongful conviction, wrongful prosecution, wrongful detention or wrongful infliction of an administrative penalty in the form of detention or corrective labour shall be fully compensated by the State irrespective of the fault of officials of the investigating, examining or prosecuting authorities or of the court. This principle was developed by a Decree of the Presidium of the Supreme Soviet of the USSR dated 18 May 1981, which approved Regulations on the procedure for compensating damage caused to a citizen by unlawful acts of the investigating, examining or prosecuting authorities or of the court. These Regulations were made more specific by a special Instruction on their application. In accordance with the Regulations and the Instruction, a citizen who has been wrongfully prosecuted is to be fully compensated for any material loss and his labour, pension, housing and other rights are to be fully restored.

In essentials, all the most vitally important rights and freedoms of Soviet citizens now enjoy judicial and legal protection.

Recourse to the court against the unlawful act of officials and the protection of the honour and dignity of a citizen or an organization are covered by article 58 of the Constitution of the USSR and article 7, paragraph 1, of the Principles of Civil Law. Here again, however, we find certain distortions against which even the judicial institutions have to contend.

Article 54 of the USSR Constitution affirms the right to inviolability of the person: "No one may be arrested except by a court decision or on the warrant of a procurator". This rule establishes in principle the inadmissibility of the arrest of citizens. As exceptions to the general rule, particular conditions are stipulated in which arrest is permissible. At the same time, provision is made for strict verification of legality and arrests by the procurator's office. The law of criminal procedure, in its turn, governs the principles, forms and procedures for the arrest and detention of persons

suspected or accused of committing a crime. Under article 33 of the Principles of Legislation of the USSR and the Union Republics on Criminal Procedure, a person who is detained before being notified of the charge against him has the right to complain of the acts of the person conducting the investigation, the examining magistrate or the procurator, to give explanations and to submit petitions. The procurator is bound either to approve the detention or to free the detainee within 48 hours of receiving notice of such detention. Very typical in this respect are the requirements laid down in article 6 of the Principles of Legislation of the USSR and the Union Republics on Criminal Procedure and in article 43 of the Act concerning the Procuratorate of the USSR, which provide that the procurator shall immediately release any person unlawfully imprisoned or subjected to arrest or pre-trial detention in violation of the law.

But the law is one thing and compliance with it another. There are still quite a lot of violations connected with unlawful detention and arrests. Verdicts of acquittal are returned in 0.3 per cent of cases. In 1987 87,500 cases were sent for further investigation. In 1988 2,395 people who had been wrongfully prosecuted were acquitted.

In general much remains to be done about the observance of human rights while investigation is in progress and people are detained, because the investigating authorities and the procuratorate have not yet wholly renounced their accusatory bias.

In the Soviet legislation in force a special role is assigned to the system of rules that safeguards the citizen's rights during judicial proceedings. The basis of our thinking is that the protection of the citizen's rights and interests in court is not his affair alone but also that of the State.

For example, a person accused of an offence is entitled to know what he is charged with and to give answers to the charge, to present evidence, to submit petitions, to acquaint himself with all the documents in the case at the end of the preliminary investigation or examination, to have defence counsel, to challenge the appointed examining magistrate, procurator, judge, etc.

Violation of the law of criminal procedure constitutes grounds for quashing the judgement. This applies not only to violation of an important right of the accused or defendant, such as the right to counsel, but also to violation of the right to defence in the broad sense.

There are also legal devices to assist in eliminating errors. Sentences and judicial decisions can be reviewed in the appellate and supervisory courts. The USSR Supreme Court can intervene in the examination of a specific criminal case only if a final judgement has been delivered in the

Union Republic concerned and the principles of all-Union legislation have been violated.

In 1988, for example, the higher courts set aside the sentences passed on 27,500 convicted persons.

The aim of the legal policy pursued in this country is to bring out the genuinely humanistic nature of socialist society and to eliminate whatever in one way or another has shackled, and continues to shackle, the practical accomplishment of all those tasks that are particularly conncected with human rights. And the role of the courts in the observance and protection of human rights must not give rise to any doubts whatsoever.

Reform of our political system is inconceivable without full practical application of the principles of the State based on law, just as this task, in its turn, is inconceivable without radical judicial reform, which we are tackling head-on. One of the main purposes of such reform is to enhance the role and authority of the courts in the State based on law and to broaden the democratic and genuinely lawful principles of judicial procedure. This is already being done. The accusatory bias is gradually being eliminated from the practice of the judicial authorities. In 1988 609,000 fewer people were convicted than in 1984. In 1988 71,200 criminal cases were sent back for further investigation, 2,400 individuals were acquitted—2.4 times as many as in 1984—and criminal proceedings against 1,900 people were halted on grounds relating to rehabilitation.

It has been made the first priority to create additional safeguards for the unimpeded performance of judicial functions, and this means, first and foremost, ensuring the genuine independence of the courts and the inviolability of the judges. Only an independent court can be a genuine guarantee of legality, capable of protecting the rights and legitimate interests of citizens.

The new procedure established for manning the courts (article 159 of the USSR Constitution) serves to ensure their genuine independence: henceforth they will be elected by the competent higher Soviets of People's Deputies. The dependence of the courts, primarily on the local authorities, is a fairly acute problem for our judicial system. It has led to the crudest distortions in the judicial machinery, from which citizens and their rights have frequently suffered. A judge who has received his mandate from a higher Soviet will feel more independent of the influence of local leaders.

An important addition has also been made to article 155 of the USSR Constitution. Whereas formerly this article merely proclaimed that judges were independent and subject only to the law, it has now been augmented by a specific instruction which guarantees that independence. The new text of this article provides that:

Judges and people's assessors shall be assured of conditions for the unimpeded and effective exercise of their rights and duties. Any interference with the work of judges and people's assessors in administering justice is prohibited and renders the offender liable to prosecution.

The inviolability of judges and people's assessors and other guarantees of their independence are established by the Act concerning the Status of Judges in the USSR and other legislative texts of the USSR and the Union Republics.

This Act on the status of judges in the USSR has been prepared, together with the draft of the new Principles of Legislation of the USSR and the Union Republics on the Judicial System. The provisions contained in these draft laws making it a criminal offence to interfere with the consideration of criminal and civil cases by the courts, and making contempt of court an administrative offence, are intended to help neutralize the practice which sometimes exists among local authorities of interfering with the administration of justice. The guarantees of the inviolability of judges are being strengthened: these draft texts institute a special procedure for the early recall of judges and regulate questions concerning the prosecution and trial of judges, detention, search and so forth. All these guarantees, of course, suffer from a certain vulnerability in practice. All reservations must be eliminated, and we intend to do it.

I think it is also relevant to mention the provisions of other draft laws which are designed to make our legislation more humane and which consequently also serve to protect human rights in direct conformity with the international conventions on this subject.

Most judicial errors that lead to violation of human rights arise at the stage of pre-trial examination, so it is high time to raise the question of reviewing the rules governing the examination procedure.

The following proposals accordingly deserve close attention:

The first is for the removal of the pre-trial examination from the administrative control of the procuratorate and the establishment of an "Examining Committee of the USSR". This, on the one hand, will ensure the procedural independence and responsibility of examining magistrates and on the other will make the procurator's supervision genuinely uncompromising in assuring legality—a situation which in the last analysis serves the idea of protecting citizens' rights and legitimate interests;

The second is for the admission of defence counsel to the pre-trial examination from the time when a charge is made or, even better, from the time of arrest or detention;

The third is for strengthening the supervision of pre-trial detention.

At the present time, under article 34 of the Principles of Criminal Procedure, the procurator is entitled to apply detention as a preventive measure to individuals taken *in flagrante delicto*. The maximum period of such preventive detention, which requires the sanction of the General Procurator of the USSR, is nine months. In practice, however, there have been more than a few cases of longer detention with the knowledge of the Presidium of the Supreme Soviet of the USSR—something not envisaged by the law. An acute need has clearly arisen for Soviet procedural legislation to provide henceforth, in strict conformity with article 9, paragraph 3, of the International Covenant on Civil and Political Rights, for judicial supervision of a procurator's use of detention, to ensure both its legality and its validity, and of the prolongation of such detention, which should not exceed a strictly defined reasonable period (up to three months).

The main consideration is not to misuse this extreme measure. Detention should be applied as a preventive measure to individuals concerning whom there is irrefutable evidence that they have committed particularly dangerous crimes, or to recidivists. And nothing should be done in haste where an individual is suspected of economic offences. The court can always take this step when pronouncing sentence.

Improving the judicial hearing stage of the proceedings will thus help to strengthen the role of the court in protecting human rights.

First of all it is essential to consign to the scrap-heap once and for all, the mentality of certain judges who blindly believe in the absolute infallibility of examination and, as a result at times mechanically accept the prosecution's version of the facts.

As I see it, the main means of ensuring a comprehensive and objective approach to the subject-matter of a judicial hearing, and consequently of safeguarding the rights of the citizen in court, lies in strengthening the principle of the adversary character of the judicial process: in creating conditions in which the procurator and defence counsel appear in court genuinely, and not only formally, equal in rights and the deciding opinion is left to the court. In other words, it is a matter of the primacy of the court as the guarantor of respect for human rights. We cannot rest content with the current situation in which, while the equality of the parties is formally proclaimed, one of the parties—the procurator—in addressing the court, is at the same time allegedly supervising the legality of judicial decisions. It is understandable that, in such a situation, there can be no question of equality, of adversary proceedings, or of the deciding role of the court.

Strict compliance with the principle of the equality of all before the law and the courts (articles 14 and 26 of the International Covenant on Civil and Political Rights) should be furthered by the establishment of the Committee for Constitutional Supervision and by vesting in the USSR Supreme Court

the right to set aside judicial decisions taken on the basis of any kind of subordinate legislation that is inconsistent with the law, to declare such legislation invalid for the courts and, at the same time, to raise with the legislature the question of its repeal.

Lastly, I would like to emphasize the interconnection between eliminating the deficit of real humanism in our criminal legislation and gradual application of the principle that human rights are absolute and State interests relative. The draft Principles of Criminal Legislation of the USSR and the Union Republics that have been published for nationwide discussion are a graphic illustration of this.

It was precisely in the criminal law that the contradictions were most starkly apparent between the declared tenets of humanism and the general scorn for man and for his rights and freedoms in practice. I think that the draft Principles of Criminal Legislation, which are filled with ideas of humanism, will help to smooth away these contradictions.

The draft text provides for substantial reduction in the application of the death penalty. The possibility of using it is retained only under six headings which cover the gravest crimes. These are State treason, espionage, terrorism, sabotage, murder with aggravating circumstances and the rape of a minor. I wish to emphasize that the draft text provides only for the possibility, not the requirement, of applying the death penalty. Furthermore, the death penalty is not to be applied to minors, to women, or to men over 60 years of age.

The cases of application of imprisonment have been limited by the substitution of other penalties, including fines.

Such criminal penalties as banishment and expulsion have been excluded from the new draft Principles as having failed to justify themselves in practice.

The safeguards for the rights of minors have been extended significantly. The draft text does not allow minors to be sentenced to imprisonment for offences which present no great social danger.

Provision is also made for measures of decriminalization: it is proposed to transfer some acts that present no great social danger, and for which the legislation now in force prescribes a criminal penalty, to the category of administrative offences.

It is impossible not to mention the importance, in this context, of the rehabilitation of citizens condemned for so-called "political crimes" in the past, and its implications for the present.

I cannot but raise the problem of the rehabilitation of those citizens who suffered from the arbitrary measures of repression applied at the time of the cult of personality.

After the Twentieth Congress of the Communist Party of the Soviet Union (CPSU), held in February 1956, the arbitrary actions committed in the 1930s, the 1940s and early 1950s were, as we know, disapproved. Several hundred thousand victims of mass repression were rehabilitated.

Immediately after the Twentieth Congress of the CPSU, the Supreme Court started work on rehabilitating the innocent victims. The first "wave" went through in the second half of the 1950s. Then the "wave" shrank, because the procuratorate and the courts only examined these matters after receiving complaints from persons who had been arbitrarily sentenced, and most such persons did not survive until their own rehabilitation or that of their close relatives. Thus in the years 1984-1987 the Plenum of the USSR Supreme Court rehabilitated only 216 individuals.

An important development in this matter was the Decree of the Presidium of the USSR Supreme Soviet dated 16 January 1989 that quashed the extra-judicial judgements handed down at the time by the so-called "troikas" and "extraordinary councils", thus rehabilitating all those citizens who had fallen victim to the judgements of such bodies.

In 1988 alone the Plenum of the USSR Supreme Court rehabilitated 478 people, including Party and Government leaders and top army officers.

Thus on 4 February 1988 the Plenum of the USSR Supreme Court quashed the judgement passed by the Military Court on N. Bukharin, A. Rykov, A. Rozengolts and others, and closed the case in the absence of any offence.

From 7 to 13 June 1988 the Supreme Court reviewed the cases brought at the time against individuals accused of counter-revolutionary activities. Among those individuals were M. Rutin, accused of establishing an anti-Soviet organization; G. Zinoviev, G. Evdokimov, L. Kamenev and others—the leaders of the so-called "Moscow Centre", totalling 19 people altogether; Y. Pyatakov, G. Sokolnikov, K. Radek and others. All these individuals were rehabilitated by the Plenum of the USSR Supreme Court.

Rehabilitation means restoration of the victim's good name and civil rights, compensation in some degree for the harm caused—the return of confiscated goods or their value—and publication of the official announcement of the illegal and groundless nature of the accusations made against the citizen. In a word, we regard this work as an integral part of everything being done to rehabilitate people who were arbitrarily condemned.

At this juncture I would like to mention another question. Among the people rehabilitated by the Plenum of the USSR Supreme Court there were individuals convicted a few years ago during the so-called "period of stagnation". Such cases of groundless conviction were few, but they nevertheless occurred. Some citizens were found guilty of committing particularly dangerous State or other crimes (in the West these are usually called political crimes), while others were found guilty of committing general criminal offences against property, or in the course of their duties, or against the life or health of other citizens. With regard to the second group I wish to mention that steps are being taken in our country to reduce the number of judicial errors to a minimum, as witness the practice of the USSR Supreme Court.

Reverting to the so-called "political"crimes, I can affirm that the attitude taken towards them in judicial practice is absolutely unequivocal: whatever an individual may have uttered, its context can be called a "political" crime only where specific acts aimed at undermining or weakening State authority, or incitement to commit such acts, are established. If that is not the case, there is no crime against the State.

In 1986-1987 alone 356 people were freed who had been tried for so-called "political" crimes, mainly under article 190-1 of the Criminal Code of the RSFSR, which makes it an offence to disseminate deliberately false fabrications discrediting the Soviet statal and social system. It is now proposed to exclude this article from the new criminal legislation.

There are now 66 individuals in all in confinement who were sentenced for committing State crimes during the Great Fatherland War, including the so-called "punishers", a number sentenced for treason and others. In addition about 20 people who were sentenced for grave crimes (murder, robbery, rape, etc.) committed crimes covered by article 190-1 of the Criminal Code of the RSFSR while in prison, for which the court imposed an additional penalty. There are no other persons in prison for such crimes.

I would also like to mention problems relating to people allegedly committed to psychiatric clinics for their beliefs.

According to a communication from Alexander Churkin, the chief psychiatrist of the USSR Ministry of Health, the case histories of the so-called "dissidents" were thoroughly analysed by a representative commission and no instances were found in which doctors had diagnosed as mentally ill a person known to be mentally healthy. On the other hand there was hyper-diagnosis in a number of cases where the mental disturbances were less severe than some medical experts evaluated them to be.

As you know, a group of psychiatrists from the United States of America was recently in the USSR studying this problem.

In the Commission's opinion, such errors were committed in a total of 18 cases.

The safeguards of the rights and legitimate interests of persons suffering from mental disturbances have been strengthened by the regulations on the conditions and procedure for rendering psychiatric help, approved by a Decree of the Presidium of the USSR Supreme Soviet dated 5 January 1988.

Under these regulations, the principle of criminal liability for wrongful committal of a person known to be healthy to a psychiatric hospital has been reinstated, citizens are guaranteed the right of appeal to a court in case of disagreement with the decisions of psychiatrists and boards, and provision is also made for them to receive the legal aid of counsel in order to secure their rights.

In conclusion I consider it essential to emphasize that, without a State based on law, without openness and democracy, there can be no guarantee that the process of creating the proper conditions for all-round development of the personality and observance of human rights is irreversible.

I believe it is necessary to enlarge on that remark with the following observations.

In the first place I should mention the substantial improvement in the legislation, whose purpose is not only to proclaim rights but also to establish guarantees of their observance. Secondly, a substantial change is taking place in the life of our society in the current stage of restructuring. It is now characterized by frankness: facts about the crime rate and convictions have begun to be published, and the public are learning about all the events taking place in the country, both favourable and unfavourable. Under these conditions, when the nation itself is awakening and its legal conscience is forming, it is acquiring the ability to defend legality and to uphold more effectively than anyone else the moral principles common to all mankind which should permeate our legislation and its practical application. For it has long been known that neither principles nor laws, however just they may be, can defend themselves.

Reform of the political system and the formation of a socialist State based on law, both founded on the affirmation of full sovereignty of the people: these are the principal and fundamental guarantees of the irreversibility of the positive processes taking place in this country.

Some thoughts on the implementation of human rights

*Rosalyn Higgins**

The implementation of human rights is, understandably, a current preoccupation. The implications of this preoccupation merit more detailed examination.

In this first place, there is a widely held view that the past forty years has seen an unparalleled elaboration of a multitude of human rights norms, and that what is now required is not a further expansion of the list of human rights but rather their enforcement. It is to the implementation of these rights, rather than to the enlargement of the list, that in the view of many attention should now be directed.

I believe this to be an oversimplified approach, because it assumes that there are two basic, and very different, activities—the articulation of human rights and their implementation. My own view is that there is rather a seamless web, and that the identification and invocation of human rights is a necessary integral element in implementation. To many people, "implementation" carries overtones of enforcement, of sanction, or a least of control. But in fact implementation occurs in a variety of ways, and identification and invocation of rights are among those ways.

The enforcement of human rights is by no means the only approach to implementing these freedoms. The denouncing of States for human rights violations, and the mounting of sanctions against them, is not always the most effective way, especially when engaged in by bodies composed of States' representatives, who can sometimes seem very selective in whom they condemn, and whom they do not. The mounting of multilateral sanctions is notoriously difficult. And there are differences of view as to whether these are likely to achieve the desired ends. And even individually imposed pressure by States can present many problems of foreign policy formulation.

Some States have standing legislation that directs military aid and economic assistance to be tied to human rights compliance. But the normal

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practice can be varied in the face of "exceptional circumstances". Most States treat the matter as one of political discretion rather than legal obligation—and for them too it is hard to know whether the provision of aid will act as a lever to improve human rights performance, or whether its withdrawal would rather provide a salutary indication of disapproval. Even more difficult is the problem of whether funds should ever be withheld from multilateral aid agencies when they are directed to States who ignore human rights.

Fortunately techniques other than condemnation and sanction exist to assist in the implementation of human rights. These involve an understanding that implementation does not stand by itself—the identification, invocation and appraisal of human rights are not matters that can be set aside the better to concentrate on implementation. They are all part and parcel of implementation.

Obviously a human right cannot be implemented until it has been identified and articulated (in one or other of the accepted normative forms) as such. Thus civil and political rights, and also economic, social and cultural rights, make "their appearance" in treaties and declarations and resolutions. Whether a particular claim of an individual *vis-à-vis* a State is properly to be classified as a human right (rather than a mere desire or aspiration) can sometimes be the subject of legitimate debate. But I do not accept the view that if we only had a few "rights", and especially if we curtailed the formulation of any further rights, we could concentrate on implementation and many of the problems would disappear. I have suggested elsewhere[1] that

> [t]he view that we already have "more than enough human rights" depends very much on where you stand. From the perspective of the well-fed liberal person living in a Western democracy, there may indeed already be "more than enough rights". But many in the third world believe that "basic needs" rights have yet to be articulated in any meaningful legal form, let alone be realized. The requirements of a minimum food level, a roof over one's head, and the freedom to live in a family unit, are still not recognized as *human rights* in the legal sense of the term.

It is widely supposed that the effective implementation of human rights requires condemnation of States who violate human rights, legal compulsion to ensure better behaviour, and probably also sanctions to compel compliance. It is the purpose of this article to suggest that this is a crude perception of what implementation of human rights is all about. The identification of claims as human rights assists in the setting of international standards. The repeated invocation of rights assists in the perception of them as normative, and assists in turn in their implementation. Thus many of the rights proclaimed in the Universal Declaration of Human Rights—itself not binding—have been so invoked in a variety of jurisdic-

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[1] "Encouraging Human Rights", *LSE Quarterly*, autumn 1988, p. 249.

tions that they are regarded as reflective of customary international law. *Invocation* is one of the building blocks of compliance.

As we shall see, implementation is also facilitated by the *promotion* of human rights. The more that people know about their rights, the procedures for achieving them and the remedies for any violation, the more pressure there is on a State to implement its obligations.

These factors mean that even where rights are contained in instruments that are not strictly binding and provide for no independent body to appraise compliance, identification and invocation of those rights can still assist in the attempt to make them effective.

But of course the existence of an independent body to *appraise* compliance and a legal obligation upon States to accept and obey its findings, is a significant help. Thus under the European Convention on Human Rights we have not only the Commission and the Court; but States are obliged to accept and give effect to the findings of the Court. Because acceptance of the jurisdiction of the Commission and of the Court is optional, the standard of compliance with decisions and judgements is high. But even where the legal obligation to comply is weaker, as under the International Covenant for Civil and Political Rights, a psychology of compliance is being built up, and important steps towards implementation are being taken.

The Human Rights Committee under the International Covenant on Civil and Political Rights has two treaty functions of particular importance in the context of implementation of rights. The first is the examination of States' reports. The second is the determination of cases brought before it under the Optional Protocol.

Under the Covenant on Civil and Political Rights every State party is required to submit a report on human rights in that country within a year of the Covenant entering into force for it (article 40). The Covenant further provides (article 40 (1) (*b*)) that States parties shall provide reports thereafter whenever the Committee so requests. In fact, the Committee does occasionally call for supplementary reports—this is usually done when a report is felt inadequate, either in length or in content. But the Committee has also decided that reports should be routinely provided every five years. The Committee is now starting to receive third periodic reports from some States, is dealing with the second periodic reports of many, and is examining initial reports from a few States who have only recently ratified the Covenant.

To see the place of the reporting system as part of the process of implementing human rights is hard for those who think of implementation only in terms of condemnation and sanctions. But the reporting system is a very effective tool in securing compliance with human rights obligations. The very knowledge that legislation and other public acts will be scrutinized

and measured against the requirements of the Covenant is an incentive to check proposed legislation or administrative decrees against the requirements of the Covenant. It is an encouragement to *a priori* compliance. The preparation of the reports is also a salutary exercise. The Committee's guidelines instruct States to provide information on legislation, administrative practices and case law in relation to each and every one of the rights guaranteed under the Covenant. This exercise requires the government departments concerned to review their law and practices against the yardstick of human rights. A failure to comply is often inadvertent and preparation of the reports often highlights problems about the compatibility of certain laws and practices with the human rights obligations. Further, the examination carried out by the Human Rights Committee assists in implementation by the encouragement of compliance. The reports are publicly examined in the presence of representatives of the State. The procedure is not based upon hostile cross-examination, but rather on a constructive dialogue. The Committee avoids attacks or general condemnation. Rather, members put questions or make observations, offering praise when praise is due, pointing out shortcomings or making criticisms of certain laws and practices when that is necessary. The examination is not directed to categorizing certain States as "bad" human rights States, to be condemned by resolution or otherwise. Rather it is directed to assisting the Government concerned in making progress in the realization of human rights in its territory.

The Committee is sometimes told by the representatives of States that an earlier examination of a report drew problems to their attention; and that these problems of incompatibility with the Covenant have now been rectified by new legislation or other measures, which they lay before the Committee for examination.

Some other treaties also contain a reporting mechanism—for example, the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), the International Covenant on Economic, Social and Cultural Rights, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment on Punishment (CAT).

Under the Optional Protocol to the Covenant on Civil and Political Rights States may agree to allow cases to be brought against them by individuals within their jurisdiction claiming to be victims of violations of human rights. This very fact is an incentive to compliance. If findings are made against the State concerned, the Committee cannot insist that its views are implemented. But often States will choose to do so, accepting that at the end of the day the Committee is best placed to determine whether there has indeed been a violation, and what is required to put a State back into compliance with the Covenant. Again, the CERD and the CAT also seek to implement human rights through this process of individual complaints. The

practice of the European Convention on Human Rights is eloquent testimony to the importance of individual claims in building up an ethos of continuous adjustments in national laws and practices to ensure implementation of obligations that have been determined in the particular case by an international organ.

An important prerequisite for implementation of human rights is that instruments containing these rights, and what individuals can do in relation to them, must be published and widely disseminated. The Human Rights Committee, in its examination of States' reports, makes a point of asking the representatives of the State appearing before it whether the Covenant is published in all the local languages, whether it is known to local lawyers, to universities and to schools, whether the fact of the examination by the Committee of its report is known, and whether the summary records of the dialogue between the State and the Committee will be made widely available.

The Concluding Document of the Vienna "follow-up" to the Helsinki Final Act also emphasizes this aspect of implementation. The States parties agree to publish the final Text and the Concluding Documents of the Follow-Up Conferences, and to make them widely available, especially through public library systems. In addition, they undertake

> effectively [to] ensure the right of the individual to know and act upon his rights and duties in this field, and to that end publish and make accessible all laws, regulations and procedures relating to human rights and fundamental freedoms (13.4).

Encouragement of teaching on human rights in schools and universities is also required (13.6).

The most effective implementation of human rights requires an interplay between international obligation and domestic commitment. International obligations undertaken without any consequential domestic commitments as to legislative changes, or to remedies, can still perform a useful standard-setting function. But it will be even more efficacious if the international treaty requires domestic laws and regulations to be altered to comply with the obligations undertaken, and if a State party is required to provide a remedy for any of the rights violated. The provision of local remedies is a key element in the implementation of rights. While the content of rights may be set at the individual level, individuals should be able to enjoy them—and to ensure that enjoyment—locally. The routine provision of remedies by the local courts, administrative tribunals and other organs of authority is the most effective guarantee. The obligation may be an international one, but the task is to be performed at the local level. Even when a treaty provides for international judicial or quasi-judicial bodies to determine whether rights have been violated, it will be required that local remedies be exhausted before recourse can he had to those bodies. Thus the European Commission on Human Rights, the Inter-American Commission

on Human Rights, and the United Nations Committee on Human Rights all will only deem a complaint admissible if the applicant has first exhausted local remedies. And the treaties concerned require that effective local remedies be available. Indeed, a failure to provide a remedy is of itself a violation of the international treaty.

That the concept of "implementation" covers a great range of techniques is very well illustrated by the Helsinki Final Act of the Conference on Security and Co-operation in Europe. This document is unusual in many regards. In the first place, it is technically not a treaty—though it is treated by all the parties as a solemn undertaking of obligations. Further, its content covers not only human rights, but also matters of security. So far as implementation is concerned, it does not provide for any organ to monitor compliance, nor for any obligatory reference to third-party adjudication. Instead, effective implementation is sought in other ways. So far as the identification and invocation of human rights is concerned, the Final Act both reiterates the binding effect of *other* human rights treaties to which signatories may be party (including the Covenant on Civil and Political Rights), and it spells out in detail undertakings in respect of one particular matter, namely, family reunification. (The entitlement of families to be reunited is of course but one aspect of the right of freedom of movement.) Thus Principle VII invokes, by cross-reference to other treaties, the generality of human rights obligations, and Basket III identifies precise commitments agreed to in respect of one element in one right.

Importantly, the Final Act also contained reference to the entitlement of individuals within the jurisdiction of the States parties to know, and act on, their human rights. This points the way to implementation through people seeking to invoke rights in local jurisdictions, to organize in groups to monitor compliance (whether at home or abroad) and to provide moral and material support for vigilance in support of human rights. Many national groups dedicated to these activities were in fact set up after the conclusion of the Helsinki Final Act, and they have undoubtedly been effective pressure groups.

An unusual implementation technique in the Final Act had been the provision for "follow-up" conferences at which the parties themselves would be able to review progress in respect of the commitments undertaken (in both the field of security and of human rights). The follow-up meetings have been very extensive, each lasting over many weeks. At the Madrid follow-up in 1983 there was produced a Concluding Document which further specified action to be taken to make effective the right of family reunification agreed to in Helsinki. Further follow-up meetings have been held in Vienna from November 1986 until February 1989, and have culminated in very long and immensely detailed undertakings. Of particular relevance here are the Principles on Questions Relating to Security in

Europe (which include matters relating to human rights generally), and provisions on human contacts. So far as the latter are concerned (which reflect the Helsinki Basket III provisions, and the Madrid Concluding Document), they address many of the problems that have been found in fact to impede effective implementation of the right to family reunification. Thus there are new and very specific undertakings on the speed at which applications for travel are to be processed.

The concept of "follow-up" has, moreover, taken on a life of its own under the Helsinki process, because there have been not only the formal major follow-up meetings of the States parties, as anticipated under the Final Act, but other intermediate meetings too. Some of these have been at the expert level; and they have become part of the technique for monitoring compliance and for pushing forward with implementation. Thus, for example, in addition to the Madrid and Vienna follow-up meetings, there has been a meeting at Berne of Experts on Human Contacts; and a meeting at Ottawa of Experts on Questions concerning Respect, in their States, for Human Rights and Fundamental Freedoms, in all their Aspects, as embodied in the Final Act. There has now developed an interesting institutional relationship between the meetings of Experts and the States parties' follow-up meetings.

The dynamic nature of this process is illustrated by the introduction of implementation techniques considered beyond the bounds of political possibility at the time the Final Act was concluded in 1975. Thus meetings of experts have been held in Montreux and Athens on the peaceful settlement of disputes. By the time the Vienna follow-up conference had been concluded, the States parties were able in the Concluding Document to agree to "accept, in principle, the mandatory involvement of a third party when a dispute cannot be settled by other peaceful means" (para. 6). Further, "to ensure the progressive implementation of this commitment" (para. 7) there is to be convened in Malta in 1991 a Meeting of Experts to establish categories for third-party settlement and the related procedures and mechanisms—a list which would itself be subject to gradual extension. These proposals would be assessed at the next follow-up meeting.

We may conclude by saying that there are many diverse techniques at our disposal to facilitate the implementation of human rights. They have little to do with enforcement. Although the road remains a hard one, requiring time, effort and patience, these more sophisticated techniques offer the best chance of the effective realization of human rights.

Force and development of human rights

*Julio Prado Vallejo**

Since the Universal Declaration of Human Rights was proclaimed by the United Nations on 10 December 1948, the protection of human rights has been improved by means of agreements, multilateral decisions, governmental measures and other steps. This has led to the acknowledgement and adoption of regional or universal human rights norms, and the creation of national and international organizations to protect and promote them. Many nations have welcomed these principles and have given them mandatory status by incorporating them in their constitutions or legal codes. Over the past twenty-five years, in particular, concern for human rights has resulted in the setting up of mechanisms intended to guarantee the rights of any individual.

This is perhaps one of the most important steps taken by the world community as a result of the evolution which has occurred especially since the adoption of the Charter of the United Nations in 1945 and the Universal Declaration of Human Rights in 1948.

In the past the binding nature of international human rights law was a matter of debate. Today, there is universal agreement on this principle, reflecting a new consciousness of humankind. No one can doubt that human rights norms generate obligations and duties even in the case of institutions which have not included such norms or principles in their internal law. Human rights norms are binding whatever the will of States. If a State persists in violating human rights systematically, that same State is not excluded from the obligation of fulfilling them. In the case of a continuation of human rights violations, a State acts against the community of nations and against the ethical and legal values which orient and condition the consciousness of mankind. The mandatory aspect of human rights norms is not affected by the non-fulfilment of the obligations of States.

The Vienna Convention on the Law of Treaties (1969) defines as an obligatory norm of international law "A norm approved and recognized by the whole international community, [as a norm] which does not admit any disagreement and [it] can only be modified by another norm of general in-

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ternational right of the same character". The Ninth American Hispano-Luso Congress (1979) considered as binding rules of international law (*jus cogens*) "those derived from the practices of States, from the jurisprudence, from the courts and doctrines as well as from the resolutions and statements of the international organizations accepted by consensus". The concepts and legal arguments asserting *jus cogens* may also be applied to human rights.

International human rights law has developed a great deal. Several advances can be mentioned. The first of them is the universally accepted principle that human rights should have the international protection of the community of nations. Nobody questions this principle any more. Independently of whether States accept them or not, the world-wide protection of human rights is guaranteed by a range of international instruments, such as declarations, covenants, conventions, agreements and resolutions.

The second principle to be stressed is the one that proclaims as a fundamental precept that the defence of human rights does not imply intervention in the internal affairs of another county. The signatory nations of the Andean Pact have stated this principle emphatically in the Charter of Behaviour signed by Bolivia, Colombia, Ecuador, Peru and Venezuela. This principle is directly derived from the first, namely that human rights should have the protection of the international community. If States accept the principle of international protection of human rights, it is clear that their defence and promotion may result in the criticism and condemnation of the actions of certain Governments which violate or disregard those universal norms.

The third principle that is a really important advance for the preservation and respect of the values of the human person, is the acknowledgement of the right of an individual to make a complaint about a human rights violation by his or her own Government before an international organization and seek international protection. It is true that not all of the Member States of the United Nations have ratified or acceded to the Optional Protocol to the International Covenant on Civil and Political Rights or have made the declaration under the Convention against Torture or the Convention on the Elimination of All Forms of Racial Discrimination, which allow an individual to file a complaint against his own State. However, it is evident that this possibility exists and an increasing number of States are accepting the right of individual complaint.

It is also worth noting that the possibility exists for a State to make a complaint against another State before an international body concerned with human rights. Not all States have recognized this option, but it is encouraging that it is now accepted as an alternative means of defending the essential values of the human person. The United Nations Commission on Human Rights has been very active in this process, and several States

through their representatives have accused other States of violations of human rights norms and principles against their own citizens.

The development of international human rights has lead to the acceptance as a fundamental principle of the primacy of international norms over domestic legislation. Even those States whose constitutions require the incorporation of international treaties into their national legislation in order to make them binding accept that certain principles proclaimed by the international community, contained in international covenants and conventions, or part of the customary law of a nation, are mandatory. They also accept that, in cases of conflict, international norms have precedence over national ones.

Several States in different areas of the world have given this principle pre-eminence in their political constitutions. In article 25 of the Constitution of the Federal Republic of Germany, for example, it is stated that "The general norms of international public right are a constituent part of the Federal Rights". The Constitution also states that the general norms of international law "have primacy over the law and are direct sources of rights and duties for the inhabitants of the federal territory".

A number of other States acknowledge the higher status of international norms and grant them supremacy over their national law. The Constitution of Portugal of 1975 in article 8 reads: "The norms and principles of the international general right or common right are a constituent part of the Portuguese right". This means that international law has equal status with internal norms in the Portuguese legislation, linking the [Portuguese] State to the international context.

The same concept is stipulated in the Constitution of Spain. Furthermore, it is worth stressing that the Spanish Constitution establishes something really significant when it states that the norms in relation to human rights and fundamental freedoms acknowledged by the Constitution of Spain "will be interpreted in accordance with the Universal Declaration of Human Rights and the international treaties and agreements on the same subject confirmed by Spain". In other words, the Spanish Constitution in human rights matters is subject to international law. Thus, international agreements and treaties are used by the Spanish authorities and courts for the purpose of interpretation.

In the Constitution of Peru, it is expressly stated that international treaties have priority over national legislation, and even over the Constitution. Under the Constitution in force in Ecuador "The Ecuadorian State guarantees to all individual men or women under the national jurisdiction the free and effective exercise of their civil, political, social and cultural rights, statements in declarations, pacts, conventions and the rest of legal instruments in force". According to this arrangement the norms and prin-

ciples of international law are made mandatory in the national legislation and are automatically applicable in local law.

All the above examples and others we could quote lead to the clear conclusion that international law has pre-eminence over internal norms. For this reason States are committed to fulfilling obligations assumed under the international covenants on human rights in good faith. In States where those instruments are not incorporated into the legislation, or where domestic laws are in conflict with international norms, human rights norms and principles should still be considered paramount.

The international juridical order arises from the community of nations. It is true that in earlier times and even before the Declaration of Virginia or the French Revolution, the concept of human rights was not well defined. It is also true that in those times human rights norms did not enjoy the pre-eminence they do at present. No international laws or organization existed to protect human rights and States believed that these matters were only of internal concern. The notion of human rights was largely underdeveloped. Furthermore, the international consensus which today acknowledges human rights as pre-eminent, even over State legislation, and proclaims them as universal and imprescriptible values for humankind, had not yet been reached. Even if human rights are violated, it does not mean that they do not exist as rights but that the mechanisms to implement them have not been effective enough to turn them into a vivid and acting reality.

On this point it is important to mention the work of the Human Rights Committee created by the International Covenant on Civil and Political Rights. States must appear before the Committee to verify their fulfilment of the Covenant. When the legislation of a State goes against the rights established in that international instrument or a State's actions do not comply with the obligations under that treaty, the Committee may recommend a modification in the national legislation or the conduct of a Government in order to satisfy human rights norms. The Committee's recommendations, together with the analysis of the report of the Member State, have encouraged several States to change their policies.

From the legal viewpoint, human rights are a limitation on the political power of States. Such rights are not a creation of a particular Government but essential values about human dignity that no régime can destroy whatever its political persuasion.

Although States are obliged to fulfil human rights norms and principles, it is evident that serious violations do occur repeatedly. Every day experience demonstrates that the "paradise" of human rights for all is far from being attained. All States at some time have problems related to human rights. There are also different concepts of human rights according to the political régime of States. For most of the pluralist and democratic Western States, political and civil rights have primacy over social and

economic ones. For the socialist countries, on the other hand, social and economic rights are emphasized over those in the civil and political domain. This different emphasis on human rights is unacceptable because both groups of rights are fundamental. They are both sides of the same coin and deserve to be equally supported. Of course they have different goals: for example, economic and social rights seek to establish a progressive improvement in the economic development of a country. It can, however, not be accepted that some rights are more important than others.

It should also be clearly stated that human rights are not the patrimony of either the left or the right. They do not belong to any political party, although sadly we have seen that some rightist régimes look down on them because they consider that human rights are mainly supported by leftist groups. Human rights do not have a political nature and rightist groups, especially from the third world, have wrongly considered these rights as exclusively the concern of their opponents. It is also worth mentioning that the defence of human rights is not about seeking impunity for the common criminal. Society has to defend itself, but in so doing it must apply the law without violence or arbitrariness. Everybody, even those persons accused of a crime, is a human being with rights which should be respected by States. The first duty of a State is to treat criminals as human beings, respecting their dignity and integrity, and assuring a fair trial.

States are obliged to take effective measures to protect human rights in their legislation. Their first duty is to establish an effective resource which an individual who considers that his rights have been violated, can use. All violence is unacceptable but State violence is still more unacceptable, because it has all the material and legal power. All terrorism should be condemned as a crime which harms humanity but that of the State is equally as destructive.

The first individual right is the right to live and the first collective right is that of the self-determination of a people. Both of them are related. The individual, to live in society and enjoy well-being, must be free to use and dispose of his own resources on behalf of his people.

For States parties to the International Covenant on Civil and Political Rights, the complaint of an individual against his Government can be made after ratification of the Optional Protocol. The Optional Protocol allows citizens from these States to use this international instrument. Even when a violation started before ratification, if it continues after the date of entry into force of the Covenant and Optional Protocol for the State party concerned, the practice of the Human Rights Committee has been to consider a complaint. This was agreed upon because States when signing the Covenant commit themselves to adopting the legislative measures necessary to put into force all the rights contained in the treaty.

Although mechanisms exist to defend human rights, it is evident that after the procedures and pronouncements of the bodies responsible for guaranteeing human rights, there is no means to enforce human rights law physically. Its observance depends on the good faith of States and the political willingness of Governments to put into force mechanisms to ensure protection of human rights. As a last resort, pressure at the national or international levels can play a decisive role. No Government likes to be publicly and repeatedly accused as a systematic violator of human rights. When it happens, the reputation of that Government is affected both at home and abroad. Governments are, therefore, careful and concerned about public criticism of human rights violations.

This leads us to the conviction that international and national organizations promoting respect for human rights should be strengthened. The United Nations Human Rights Committee, as established by the International Covenant on Civil and Political Rights, although not a tribunal, has moral authority and its pronouncements and recommendations have yielded results, causing States to modify their internal regulations to improve the human rights situation.

One of the main principles of human rights instruments is equality before the law. This is an essential norm which cannot be made conditional and give advantage to some citizens before others. The other important principle is the presumption of innocence before trial. This principle is essential to stop arbitrariness and to ensure that evidence is presented to allow a proper judgement. An aspect that should be stressed is the need to ensure that detention without charge should not be unduly extended. This is important because there are still laws in certain States which allow indefinite detention while investigation is in progress. This may take weeks or months and can end inconclusively if no evidence is found against the individual arrested. In such cases State compensation to the victim is necessary because justice must be quick and effective, otherwise abuses and arbitrariness may arise.

The international community is now developing the third generation of human rights, including the rights to development, to peace, to the common heritage of mankind, and to a clean environment. We are at the early stages in the development of these rights, which reach into every community. Increasingly they will gain importance, even if there is a long way to go before they become a reality. It is still necessary for the rights of the first and second generations, that is to say civil and political rights and economic, social, and cultural rights to be improved. Mechanisms and effective systems for human rights observance need to become the basis for national life and peace among States. It is necessary to continue working to promote respect for human rights everywhere and thereby to fulfil the norms of the international community as proclaimed in the Charter of the United Nations and the Universal Declaration of Human Rights whose 40th anniversary we celebrated in 1988.

United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

(10 December 1984)

*Joseph Voyame**

I. Introduction

On 10 December 1984, the United Nations General Assembly adopted the Convention I have been asked to talk to you about, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which entered into force on 26 June 1987. On 1 April 1989, 41 States were parties to this Convention.

However, the United Nations had not waited for this specific instrument to condemn torture and, as far as it could, prevent it, put an end to it and repair the damage it caused.

Article 5 of the Universal Declaration of Human Rights, of 10 December 1948, already solemnly proclaimed that: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment".

The same wording was used in article 7 of the International Covenant on Civil and Political Rights, adopted by the United Nations General Assembly on 16 December 1966. As is common knowledge, this instrument established the Human Rights Committee, whose duties are similar to those of the Committee against Torture, which will be discussed below.

Subsequently, the United Nations General Assembly adopted a number of declarations, codes of conduct and principles especially for law enforcement and health personnel, particularly doctors. Those instruments were a reminder that no one may inflict, encourage or tolerate an act of torture or any other cruel, inhuman or degrading treatment or punishment.

In order to take as specific action as possible, the General Assembly also set up the United Nations Voluntary Fund for Victims of Torture in

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1981. The purpose of this Fund is to support institutions providing medical, psychological and material assistance to victims of torture and their families throughout the world. These institutions are concerned primarily with therapy and social reintegration programmes for victims; they also teach doctors special techniques for treating victims. From the time the Voluntary Fund began operating in 1983 until November 1988, $37 million had been allocated for 67 projects in some 30 countries. One of the best known institutions is the International Centre in Copenhagen, whose Director, Professor Sørensen, is a member of the United Nations Committee against Torture.

In 1985, the Commission on Human Rights made a further effort to eliminate the practice of torture without waiting for the entry into force of the Convention which is the subject of this article: it appointed a special rapporteur to report to it, and make recommendations, on the seriousness and extent of torture in the world. The Rapporteur, Professor Peter Kooijmans from the Netherlands, immediately engaged in intense activity. He has not only submitted a detailed and alarming report on the practice of torture to the Commission on Human Rights each year, but, on several occasions, has also appealed urgently to Governments to guarantee the physical and moral integrity of persons who have been tortured or threatened with torture.

II. The Convention against Torture

1. Structure

The Convention against Torture is divided into three main parts. Part I gives the definition of torture and sets out the basic obligations of States.

Part II establishes international machinery to monitor the implementation of the Convention.

Part III contains the usual final clauses.

2. Concepts

For the purposes of the Convention, torture is defined in terms of a number of elements (art. 1).

The first is the nature of the act: torture means any act by which severe pain or suffering, whether physical or mental, is inflicted on a person.

The second is that the person who inflicts such pain or suffering is a public official or other person acting in an official capacity.

The third is the aim of the person who inflicts pain or suffering. He acts intentionally for such purposes as obtaining from the victim or from a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, intimidating or coercing him or a third person or, more generally, for any reason based on discrimination of any kind.

The Convention makes an important exception to this definition, namely, that the term "torture" does not include pain or suffering only from, inherent in or incidental to lawful sanctions. For example, although detention may cause acute moral suffering, it cannot be said to be torture within the meaning of the Convention. Extended solitary confinement, the mutilations provided for in Islamic countries and the death penalty are, however, sensitive issues which will have to be dealt with by the bodies set up to implement the Convention.

Although the Convention defines torture, it does not define other cruel, inhuman or degrading treatment or punishment, which the implementation bodies will also have the weighty task of evaluating.

3. The basic obligations of States

(a) *Principles* (art. 2)

Under the Convention, torture is absolutely prohibited. States parties must not only refrain from practising it, but are also required to prevent it by all appropriate means and, in particular, by legislative, administrative, judicial and educational measures.

Torture may not be justified by any exceptional circumstances, such as a state of war or internal disturbances.

Lastly, anyone who commits acts of torture may not invoke the orders of a superior officer or a public authority as a justification.

(b) *Specific obligations*

In addition to these general duties, States parties undertake a large number of specific obligations which are set out in articles 3 to 15 of the Convention.

First of all, with regard to criminal legislation, each State must ensure that acts of torture are offences under its criminal law and are punishable by appropriate penalties (art. 4). Most States already have the necessary provisions in their penal code, since, as a rule, torture constitutes bodily injury at the very least.

Like other international instruments,[1] moreover, the Convention against Torture (art. 5) requires States parties to extend the jurisdiction of their criminal authorities beyond what is required by the principle of territoriality. In particular, they have to be able to try any case in which the alleged offender is one of their nationals, especially when the offender is present in their territory and has not been extradited. The Convention thus embodies the principle "*aut dedere, aut judicare*" (art. 7).

The Convention against Torture contains important rules relating to extradition (art. 8). Acts of torture are deemed to be included in any existing extradition treaty and must be included in future treaties. Moreover, if a State makes extradition conditional on the existence of a treaty and receives a request from another State party with which it has no extradition treaty, the Convention takes the place of such a treaty.

However, no person may be expelled, returned or extradited to a country where he might be in danger of being subjected to torture (art. 3).

In order to guarantee the fulfilment of these obligations, the Convention provides that States parties shall afford one another the greatest measure of assistance (art. 9). It goes even further: if a person alleged to have committed acts of torture is present in the territory of a State party, the latter must itself take him into custody or ensure his presence for such time as is necessary to enable criminal or extradition proceedings to be instituted (art. 6).

The Convention also deals with information: each State party must ensure that the prohibition against torture is fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the interrogation or custody of a detainee (art. 10).

Each State party must keep under systematic review interrogation instructions, methods and practices, as well as arrangements for the custody and treatment of detainees (art. 11). It must proceed to a prompt and impartial investigation wherever there is reasonable ground to believe that an act of torture has been committed (art. 12). It must ensure that any individual who alleges he has been subjected to torture has the right to complain and that the complainant and witnesses are protected (art. 13). It must ensure that the victim of an act of torture obtains redress and receives fair compensation, including the means for as full rehabilitation as possible; if

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[1] In particular, the Hague (1970) and Montreal (1971) Conventions on the Suppression of Unlawful Seizure of Aircraft, the 1973 Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons including Diplomatic Agents and the 1979 International Convention against the Taking of Hostages.

the victim dies as the result of acts of torture, his dependants are entitled to compensation (art. 14).

Lastly, a statement obtained as a result of torture may not be invoked as evidence in any proceedings (art. 15).

All these obligations relate expressly to acts of torture, but they also apply, *mutatis mutandis*, to other acts of cruel, inhuman or degrading treatment or punishment. This is particularly so in the case of the conventional provisions on the training of law enforcement personnel, the review of interrogation methods and the treatment of detainees, the right to lodge a complaint and the impartial investigations that must be conducted by the competent authorities.

4. The machinery for monitoring the implementation of the Convention

(a) *Introduction*

As is well known, human rights are the subject of solemn declarations that are frequently infringed in practice. The prohibition on torture is a distressing example.

It was therefore considered essential to have monitoring machinery to supplement the basic rules of the Convention. Such machinery was not invented out of nothing. It was based in particular on the International Covenant on Economic, Social and Cultural Rights (art. 16) and on the International Covenant on Civil and Political Rights (art. 41) and its Optional Protocol.

For obvious reasons, however, it was not possible to go as far as in the regional conventions, such as those of the Council of Europe, but, if States parties are at least required to report to a quasi-jurisdictional international body, to hear its comments and to be brought to the attention of the United Nations General Assembly, they can be shown the possible defects of their institutions and practices and encouraged by international pressure to remedy them.

(b) *Minimum monitoring*

The Convention establishes a monitoring body, the United Nations Committee against Torture. The Committee consists of 10 experts who are elected by the States parties and serve in their personal capacity (arts. 17 and 18).

The States parties periodically submit reports to the Committee on the measures they have taken to give effect to their undertakings under the Convention. The Committee considers these reports and makes such comments

as it may deem appropriate. It may also request States to provide further explanations.

The Committee may, at its discretion, include its comments in the annual report which it submits to the States parties and to the General Assembly of the United Nations (art. 19).

It may be seen that the Committee does not condemn. Its task is to establish the facts and draw attention to them. This is why it is not really jurisdictional in nature.

This is the minimum monitoring to which all States parties are subject. It is clear that the means available for investigations are relatively limited. As to penalties, they consist mainly of the comments submitted to each State party and, possibly, of international pressure.

(c) *Confidential inquiries*

In addition to reports, however, article 20 of the Convention establishes a more effective system of investigation.

If the Committee has serious reason to believe that torture is being systematically practised in the territory of a State party, it may, after obtaining the State party's observations, designate one or more of its members to make a confidential inquiry and to report to the Committee urgently. In agreement with the State party concerned, such an inquiry may include visits to its territory.

The Committee than examines the findings of its members and transmits them to the State party concerned together with any comments or suggestions which seem appropriate. It may include a summary account of the results of the proceedings in its annual report to the States parties and to the General Assembly of the United Nations.

It may be seen that this system enables the Committee to carry out more thorough investigations. This will make penalties more effective because specific and proven facts are brought to the attention of the State party concerned and, if necessary, reported to the community of States parties and international opinion.

Unfortunately, at the last minute, a possibility of a reservation was included in article 28: each State may, at the time of signature or ratification, declare that it does not recognize the competence of the Committee to conduct the inquiries just described. To date, 10 States have made this reservation.

(d) *Communications from States and communications from individuals*

The Convention also gives the Committee two types of competence which are very important in themselves, although their significance is limited by the fact that they are optional, since they are exercised only in respect of States which have accepted them by an express declaration; the first is competence to receive and consider communications to the effect that a State party claims that another State party is not fulfilling its obligations under the Convention (art. 21); and the second is competence to receive communications from or on behalf of individuals who claim to be victims of acts of torture (art. 22).

When a State party institutes this procedure, it must first communicate its complaint to the State party concerned. If the matter is not adjusted to the satisfaction of both States parties concerned, either State may refer the matter to the Committee against Torture. After ascertaining that all domestic remedies have been exchausted, the Committee examines all the communications received and makes available its good offices to the States parties concerned with a view to a friendly solution of the matter on the basis of respect for the Convention. It must submit its report within 12 months. If a solution under the Convention is reached, the Committee will confine its report to a brief statement of the facts and of the solution reached; if a solution is not reached, the Committee will confine its report to a brief statement of the facts together with the written and oral submissions made by the States parties concerned. The report is communicated only to those two States.

Here, as may be seen, emphasis is placed mainly on efforts to reach a friendly solution which will encourage the State party concerned to give effect to its undertakings.

In the second case, the communication is submitted by or on behalf of a private individual, for example, by a non-governmental organization.

The Committee brings the communication to the attention of the State party concerned, which has to provide all the necessary explanations. Before dealing with a communication, the Committee must ascertain that the same matter has not been, and is not being, examined by another international body; it also ascertains that domestic remedies have been exhausted. It then considers the communication and the other information it has received and forwards its views to the State party and to the individual concerned.

This procedure is thus also designed, on the basis of specific facts, to encourage the State party concerned to give effect to its undertakings, particularly in respect of the complainant.

The Committee's competence to consider both communications from States and communications from individuals may genuinely bring about real and considerable improvements. These two types of competence are, however, optional. As at 1 April 1989, 18 States (out of 41) had recognized the Committee's competence in respect of communications from States and 17 States had recognized the Committee's competence in respect of communications from individuals.

(e) *The Committee's work*

What has the Committee done so far? We may recall that the Convention entered into force on 26 June 1987. The Committee was elected on 26 November of the same year and held its first session from 18 to 22 April 1988. During that session it elected its officers, adopted its rules of procedure and drafted provisional guidelines for the submission of reports by States.

Because of the lack of financial resources, the Committee was unable to hold its second session in 1988. The cost of its meetings are not charged to the regular United Nations budget, but must be specially covered by the States parties and not enough funds were available in 1988.

It was therefore in April 1989 that the Committee held its second session, which lasted two weeks. It was able to consider the reports of seven States parties. In connection with each report, it requested the delegation present to provide further information and communicated to it its comments and various recommendations. The Committee noted that most of the legislative and administrative measures taken to implement the Convention were comprehensive and adequate. In a few cases, however, it found that torture had not yet disappeared, despite the good will of the Governments concerned.

The Committee also began its consideration of complaints from individuals.

The third session will be held in November 1989 and will last two weeks. The Committee will consider 14 reports. It will also deal with pending communications from States and individuals and with those received since the last session.

In conclusion, it may be said that the Committee has made a resolute start to its work. Its members are all anxious to carry out the important and urgent task entrusted to them, provided that they are given the means to do so, so that they might help to eliminate the terrible modern-day scourge of torture.

Human rights forty years after the Universal Declaration of Human Rights

*Halima Embarek Warzazi**

The fortieth anniversary of the Universal Declaration of Human Rights has been celebrated against an exceptional background. Now, as the year draws to a close, for the first time since the end of the Second World War the world has seen an impressive thaw in international relations that has finally swept away the ill-effects of distrust and misunderstanding and ended the dialogue of the deaf which has given rise to so many conflicts, so much suffering and such flagrant and systematic violations of the human rights of the weak, the dispossessed and the oppressed throughout the world.

Admittedly, much remains to be done to restore understanding and so ensure peace, justice and dignity for all peoples of the world. However, there is every reason for hope as long as deeds reflect this political readiness which, like a precious flower, had to be nurtured with infinite patience and unremitting perseverance so that it could bloom before the eyes of a still incredulous world.

The fortieth anniversary of the Declaration has therefore been celebrated with an enthusiasm that is more than usually justified because of the promise that the future seems to hold out for the majority of peoples, who have not benefited from or enjoyed as they should the rights proclaimed in a Declaration which, in 1948, was none the less adopted with eight abstentions.

Since then, the Declaration has been unconditionally supported by all countries, regardless of their ideological, political or religious systems. It has been used time and time again as a frame of reference for countless constitutions and laws, especially by young States which gained independence by invoking the Declaration to challenge the colonial powers in their

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struggle to obtain one of the most fundamental of rights: the right to self-determination.

But this difficult progress towards the full enjoyment of human rights would have been impossible without the support and constant backing of numerous States Members of the United Nations, its subsidiary bodies, the committed members of the United Nations Secretariat and, of course, the indispensable and invaluable role played by the non-governmental organizations and by all those who, working in expert groups, have striven to fulfil their obligations by placing their skills, their knowledge and the force of their convictions and their impartiality at the service of the cause of human rights.

For those who, for many a decade, have watched developments in the United Nations to champion the principles proclaimed in 1948, it has been a painfully slow evolution but it has at all times been a positive one.

Whereas up until 1959 the Governments of some countries claiming to be democratic, backed by several other countries that rightly made no such claim, objected to the establishment of bodies to ensure overall respect for human rights and the Economic and Social Council endorsed an assertion by the Commission on Human Rights that the United Nations was not competent to investigate complaints of human rights violations, the newly independent countries and particularly the African countries, with their bitter experience still fresh in their minds, launched themselves wholeheartedly into the struggle against racial discrimination and pushed through the adoption, in 1965, of a Convention which finally established an implementation and international monitoring mechanism, thereby eliminating in one fell swoop all the obstacles and arguments that had been raised in the past. That international instrument paved the way for a new international understanding of the defence of human rights and made serious inroads into the hallowed principle of national sovereignty and non-intervention in a State's internal affairs.

It is also interesting to note that the International Convention on the Elimination of All Forms of Racial Discrimination, which was drafted and sponsored by the third world countries, establishes a Committee of experts and also affords the Committee the opportunity, under the terms of article 14, to receive and consider communications from individuals or groups of individuals claiming to be victims of a violation of a right set forth in the Convention, provided, of course, that the State party has made a declaration recognizing the competence of the Committee.

Yet reservations have been made to this article and in the voting in the General Assembly leads to abstentions by many third world countries, starting with a vast majority of African countries.

Consequently, as long ago as 1965 the United Nations embarked upon an exacting task, namely, codifying all of the rights set out in the Universal Declaration of Human Rights while guaranteeing that men and women, who had become subjects of international law, were given certain guarantees and avenues of appeal at the international level if they are not successful at the national level.

The adoption of the International Covenants by the General Assembly in 1966 was an "historic" act because, although the Covenants are binding on all States which ratify them, they were adopted unanimously, after more than 17 years of arduous negotiations that were often discouraging because they were so slow and because many obstacles were encountered in the course of the debates. This unanimity is some consolation for the abstentions in the vote on the Declaration and is all the more substantial in that the Covenants take into account major concerns of the third world, namely the right to self-determination, which was proclaimed as long ago as 1960 but has taken on its full significance in the International Covenant on Civil and Political Rights because it encompasses all colonial or independent peoples, and the right of all peoples freely to dispose of their natural wealth and resources.

The Covenants, which provide for monitoring machinery, took a full 10 years to enter into force.

However, even as far back as 1965, profound changes began to be felt in the United Nations and to shake up the conservative "establishment" in the human rights field.

The Economic and Social Council reinvigorated by new blood, recommended that all future United Nations conventions should include safeguard clauses for all of the rights to be protected.

The General Assembly, for its part, finally realized the role that the Preamble and Article 1, paragraph 3, of the Charter of the United Nations intended the Economic and Social Council and the Commission on Human Rights to play. The Assembly therefore urged them to consider appropriate ways to encourage and develop further respect for human rights and fundamental freedoms.

However, the stage of demanding not only respect for but also promotion of human rights had not yet been reached.

Surveys and studies conducted by the Secretariat and then by the Sub-Commission's special rapporteurs were to make it clear that it was absolutely essential to do more in order to solve problems that perpetuated or created flagrant violations of human rights.

In 1965, the Economic and Social Council, which was seized with a particularly disturbing report from the Special Committee of 24 on the situation with regard to human rights violations in colonial territories, virtually enjoined the Commission on Human Rights to look into human rights violations, including the policy of racial discrimination and segregation and the policy of *apartheid* in all countries, with particular reference to colonial countries and territories.

The Commission on Human Rights certainly did not display unbounded enthusiasm in connection with the resolution that the Council had addressed to it.

Admittedly, States were at that time jealous of their prerogatives, but virtually none could claim that no human rights violations were committed on its territory.

The Commission did in fact respond to the resolution, but only when the General Assembly, seized by the Economic and Social Council, intervened in October 1966.

Thus, in March 1967 the Commission on Human Rights set up its first *ad hoc* group of experts to investigate cases of torture and ill-treatment of prisoners and persons arrested by the police in the Republic of South Africa and appointed its first Special Rapporteur in investigate the question of the policy of *apartheid*. Once it had been prompted and had got off to a start, the Commission went seriously about accomplishing its task. The Commission's members finally awoke to the Commission's real purpose and have since striven to discharge their obligations to protect human rights.

In 1967 also, the Council authorized the Commission and the Sub-Commission to investigate flagrant human rights violations, but the example of the policy of *apartheid* had been set and both bodies tended to cover that aspect of the problem. Not until Economic and Social Council resolution 1503 was adopted on 27 May 1970 was a communications procedure open to all, a procedure for States, persons and groups of persons to bring to light violations of human rights throughout the world. We should none the less note that this "revolutionary" procedure within the United Nations does have its limits, because it relates to a consistent pattern of gross violations of human rights.

In any event, there is no State in the world today, that does not follow closely the debates in the Sub-Commission and the Commission on Human Rights precisely because these bodies have in their possession, particularly through the non-governmental organizations, information which has been lawfully obtained through the procedure laid down in Council resolution 1503 or communications made during the public meetings of these two bodies.

Special Rapporteurs have been appointed to investigate these situations and they in turn have reported back to the Commission and the General Assembly in detail on the findings of their investigations.

In this new development in the United Nations approach of ensuring implementation of the rights set out in the Declaration, and more especially of revealing to the world public situations which had been concealed under a veil of respect for national borders and for policies governing peoples who live within those borders, the United Nations Secretariat has played a decisive role, however discreet and anonymous it has had to be because of its nature. The studies carried out, the diligent and faithful implementation of resolutions and recommendations, the material and logistical support to subsidiary bodies and to experts belonging to human rights bodies and those responsible for ensuring the implementation of the various international instruments in force, the conscientious gathering of complaints and communications addressed to the Governments concerned and to the Economic and Social Council's subsidiary bodies have greatly helped to smooth away the difficulties inherent in rooting out the truths that can alone light the way for the international community on the path set for it by the Charter and the Universal Declaration of Human Rights.

The impact of information, education and training are all too clear, more particularly since the advances in science and technology have, in a few short decades, eliminated distances and borders. The international community has come to know itself, to familiarize itself with specific problems of which it knew nothing in 1948. Special attention has been paid to underprivileged groups such as women, children, young people, the elderly and the handicapped, and special decades and international years have been proclaimed and conventions and declarations have been adopted. International solidarity has generated demands for new rights. Some have been recognized, others are still under review. This means greater commitment on the part of the United Nations and of all Governments. Dialogue and negotiation are more necessary than ever before. Consequently, numerous demands have been made on the United Nations Secretariat and the human rights work it has been called upon to do has converted the Division of Human Rights into a Centre that bears a heavy responsibility: coordinating all of the activities undertaken world-wide for the protection and promotion of human rights. But it is not enough to defend rights that already exist; rights that are denied or virtually denied must also be promoted. The Centre's advisory services section has its work cut out for it. Seminars have to be organized for senior national officials, and technical and material assistance has to be provided for Governments wishing to improve the human rights situation in their countries. Help must also be given to many States parties to conventions that are unable to fulfil their obligations because they lack the qualified personnel and the wherewithal and experience to do so.

Public information in the form of bulletins, periodicals and United Nations audio-visual material have today become so important that the General Assembly constantly issues recommendations on the subject. It is no secret that peoples and individuals are ignorant of their rights to some extent because they are illiterate, poor and exploited, but above all because they are denied freedom of expression and information and have no national institutions to protect them against the State. The United Nations is therefore duty bound to alleviate such a state of affairs and to publicize as widely as possible both the successes scored in the field of human rights and the obstacles that are erected everywhere to try and prevent or hold back equality for all human beings, men and women, the triumph of justice for all, the attainment of peace, which is essential for effective respect for human rights, and a more equitable distribution of wealth and know-how that is indispensable to the harmonious advancement of all the peoples of the world. What is more, emphasis must be laid on the pressing need for the participation of all of the people, without any discrimination whatsoever, in the decision-making process in all areas of national life.

This fortieth anniversary is being celebrated at a critical juncture: all of mankind stands with bated breath because it knows only too well that its future, prosperity, safety and happiness depend utterly on a political will which must show its mettle. Consequently, all those leaders who hold in their hands the destinies of their countries, whether strong or weak, rich or poor, must assume an overriding obligation: to act, jointly and severally, in co-operation with the United Nations, in order to bring about "a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want".

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